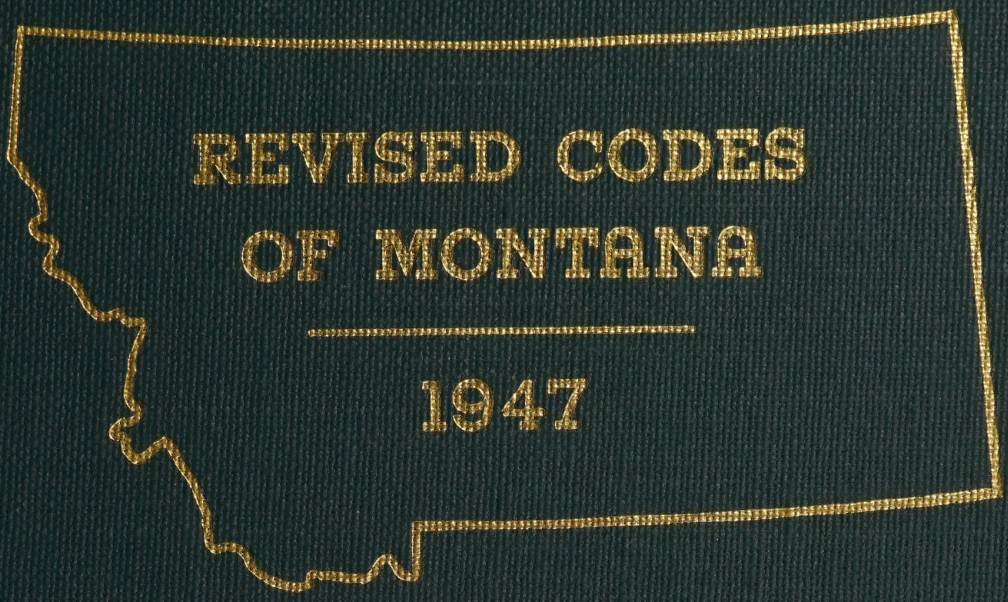


REVISED CODES OF MONTANA

1947

REPLACEMENT

VOLUME FIVE
PART 2

PROPERTY OF THE STATE OF MONTANA

REVISED CODES OF MONTANA

The Titles of These Codes Are Arranged and Numbered as Follows

Volume 1

Part 1

Constitutions, Documents, and Preliminary Laws
Tables of Corresponding Code Sections
Table of Session Laws

Part 2

1. Aeronautics
2. Agency
3. Agriculture, Horticulture and Dairying
4. Alcoholic Beverages
5. Banks and Banking
6. Bonds and Undertakings
7. Building and Loan Associations
8. Carriers and Carriage
9. Cemeteries
10. Children and Child Welfare
11. Cities and Towns

Volume 2

Part 1

12. Codes and Laws
13. Contracts
14. Co-operatives
15. Corporations
16. Counties

Part 2

17. Damages and Relief
18. Debtor and Creditor
19. Definitions and General Provisions
20. Deposit
21. Divorce
22. Dower
23. Elections
24. Electric Lines Construction
25. Fees and Salaries
26. Fish and Game
27. Food and Drugs

Volume 3

Part 1

28. Forests and Forestry
29. Fraudulent Conveyances
30. Guaranty, Indemnity and Suretyship
31. Highway Patrol
32. Highways, Bridges and Ferries
33. Homesteads
34. Hotels
35. Housing
36. Husband and Wife
37. Initiative and Referendum
38. Insane and Feeble-Minded
39. Instruments, Acknowledgment and Proof
40. Insurance and Insurance Companies

Part 2

41. Labor
42. Landlord and Tenant—Hiring
43. Legislature and Enactment of Laws
44. Libraries
45. Liens
46. Livestock
47. Loans
48. Marriage
49. Maxims of Jurisprudence
50. Mines and Mining
51. Monopolies
52. Mortgages
53. Motor Vehicles
54. Narcotic Drugs
55. Negotiable Instruments

STATE LAW LIBRARY
OCT 15 2008

REVISED CODES OF MONTANA

The Titles of These Codes Are Arranged and Numbered as Follows

Volume 4

Part 1

56. Notaries and Commissioners of Deeds
57. Nuisances
58. Obligations
59. Offices and Officers
60. Oil and Gas
61. Parent and Child
62. Parks and Public Recreation
63. Partnership
64. Persons and Personal Rights
65. Pledges and Trust Receipts
66. Professions and Occupations
67. Property
68. Public Employees' Retirement Act
69. Public Health and Safety

Part 2

70. Public Utilities
71. Public Welfare and Relief
72. Railroads
73. Recording Transfers
74. Sales and Exchange
75. Schools

Volume 5

Part 1

76. Soil and Water Conservation
77. Soldiers, Sailors and Military Affairs
78. State Capitol
79. State Finance
80. State Institutions
81. State Lands
82. State Officers, Boards and Departments
83. State Sovereignty and Jurisdiction

Part 2

84. Taxation

Volume 6

Part 1

85. Trade-marks
86. Trusts and Uses
87. Unemployment Compensation
87A. Uniform Commercial Code
88. Warehouses and Storage
89. Waters and Irrigation
90. Weights—Measures and Grades —Time—Money

Part 2

91. Wills, Succession, Probate and Guardianship
92. Workmen's Compensation Act

Volume 7

93. Civil Procedure

Volume 8

94. Crimes and Criminal Procedure

Volume 9

General Index

STANLEY M. DOYLE
ASSOCIATE JUSTICE
MONTANA SUPREME COURT
HELENA, MONTANA

Digitized by the Internet Archive
in 2022 with funding from
Montana State Library

https://archive.org/details/revisedcodesofmo5284unse

REVISED CODES OF MONTANA

1947

ANNOTATED

NINE VOLUMES

COMPILED, REVISED AND ANNOTATED
UNDER CHAPTER 184, LAWS OF 1945 AND CHAPTER 266, LAWS OF 1947
AND PUBLISHED UNDER CHAPTER 43, LAWS OF 1947

I. W. Choate
Wesley W. Wertz
CODE COMMISSIONERS

STATE LAW LIBRARY
OCT 15 2008
OF MONTANA

REPLACEMENT
VOLUME 5
PART 2
Taxation

Containing the Permanent Laws of the State in Force at the Close of the Thirty-ninth Legislative Assembly of 1965

Publishers
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright, 1949
The Bookwalter Company
Indianapolis

Copyright, 1956
The Allen Smith Company
Indianapolis

Copyright, 1966
The Allen Smith Company
Indianapolis

PREFACE

The State of Montana continues to grow in its diversification of industries, and in the assumption of new interests, cultural and business, by its expanding population. So indeed does its jurisprudence, both statutory and case law, develop to meet the changing times.

The original Volume Five of the REVISED CODES OF MONTANA, 1947 was first replaced after the 1955 session of the Legislative Assembly. Since then 300 pages of new laws, amendments and annotations have been compiled into the supplement for this volume, and much of the statutory law contained in the first replacement volume has become obsolete by repeal or amendment. This is especially true in the fields of taxation and state institutions.

For these reasons, a new issue of Volume Five became essential under the replacement program approved by the State authorities and the Montana Bar Association. The 1966 edition of Replacement Volume Five has been published in two parts in order to provide books that are not too cumbersome and to permit supplementation for a longer period. Part 1 includes Titles 76 through 83 and Part 2 contains Title 84. Thus the Taxation title, which is usually heavily supplemented by legislative additions and amendments and by annotations to the great amount of litigation in the field, constitutes an entire book. This should make the Supplements easier to handle and should postpone the necessity for further replacement.

This Replacement Volume Five contains all existing laws in the above titles, through the regular session of the Thirty-Ninth Legislative Assembly, and all notes and annotations have been brought to date. Excluded are obsolete laws, local and special laws, appropriation acts, resolutions, and enacting and repealing clauses.

The arrangement and numbering system of the original volume have been retained; hence the General Index and its supplement may be used as before in locating particular laws. Legislative history references have been brought to date and no changes have been made in the general style used heretofore.

Annotations have been added covering decisions of the Supreme Court of Montana and of the United States Supreme Court and other Federal courts through volume 144 Montana Reports, volume 405 Pacific 2d, volume 378 United States Reports, volume 12 Lawyers' Edition 2d, volume 85 Supreme Court Reporter, volume 348 Federal Reporter 2d, and volume 243 Federal Supplement.

This volume may be cited as Repl. Vol. 5 (Part 2), Revised Codes of Montana, 1947. For references to sections, we recommend "Sec. ———, Repl. Vol. 5 (Part 2), Revised Codes of Montana, 1947."

To Wesley W. Wertz, Code Commissioner of the 1947 Codes, we extend our thanks for his advice and able assistance in the preparation of this Replacement.

The Publishers

SUMMARY OF CONTENTS
OF
REVISED CODES OF MONTANA, 1947

VOLUME 1

Part One: MAGNA CHARTA
DECLARATION OF INDEPENDENCE
CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES
INDEX TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA
ACTS OF CONGRESS RELATING TO THE AUTHENTICATION OF LAWS AND RECORDS
ORGANIC ACT OF THE TERRITORY OF MONTANA
THE ENABLING ACT
INDEX TO ENABLING ACT
CONSTITUTION OF THE STATE OF MONTANA
INDEX TO CONSTITUTION OF MONTANA
TABLES OF CORRESPONDING CODE SECTIONS
TABLE OF SESSION LAWS

Part Two: TITLE 1, AERONAUTICS, TO TITLE 11, CITIES AND TOWNS

VOLUME 2

Part One: TITLE 12, CODES AND LAWS, TO TITLE 16, COUNTIES

Part Two: TITLE 17, DAMAGES AND RELIEF, TO TITLE 27, FOOD AND DRUGS

VOLUME 3

Part One: TITLE 28, FORESTS AND FORESTRY, TO TITLE 40, INSURANCE AND INSURANCE COMPANIES

Part Two: TITLE 41, LABOR, TO TITLE 55, NEGOTIABLE INSTRUMENTS

VOLUME 4

Part One: TITLE 56, NOTARIES AND COMMISSIONERS OF DEEDS, TO TITLE 69, PUBLIC HEALTH AND SAFETY

Part Two: TITLE 70, PUBLIC UTILITIES, TO TITLE 75, SCHOOLS

VOLUME 5

Part One: TITLE 76, SOIL AND WATER CONSERVATION, TO TITLE 83, STATE SOVEREIGNTY AND JURISDICTION

Part Two: TITLE 84, TAXATION

VOLUME 6

Part One: TITLE 85, TRADE-MARKS, TO TITLE 90, WEIGHTS—MEASURES AND GRADES—TIME—MONEY

Part Two: TITLE 91, WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP, AND TITLE 92, WORKMEN'S COMPENSATION ACT

VOLUME 7

TITLE 93, CIVIL PROCEDURE

VOLUME 8

TITLE 94, CRIMES AND CRIMINAL PROCEDURE

VOLUME 9

GENERAL INDEX

TABLE OF CONTENTS

Volume 5 (Part 2)

TITLE 84. TAXATION — Page

Chapter
1. Definition of terms — 2
2. Property subject to taxation—basis for taxation — 4
3. Classification of property for taxation—basis for taxation — 10
4. Assessment of property—powers, duties and liability of county assessor — 19
5. Assessment book—form—contents—disposal — 40
6. Equalization of taxes by county boards of equalization — 46
7. Equalization of taxes and administration and supervision of all tax laws by state board of equalization — 52
8. Railroads operating in more than one county—assessment franchise, etc. by state board of equalization — 69
9. Telegraph, telephone, electric power and other lines—assessment by state board of equalization — 72
10. License taxes—carbon black producers — 75
11. License taxes—cement dealers — 78
12. License taxes—cement and gypsum producers — 82
13. License taxes—coal mines — 86
14. License taxes—coal retailers — 90
15. License taxes—corporation license tax — 94
16. License taxes—electrical energy producers — 113
17. License taxes—express companies — 115
18. License taxes—gasoline dealers and distributors—special fuel tax — 118
19. License and other tax proceeds—how disposed of — 142
20. License taxes—metalliferous mines — 144
21. License taxes—natural gas distributors — 152
22. License taxes—oil producers — 156
23. License taxes—sleeping car companies — 162
24. License taxes—store license — 166
25. License taxes—telegraph companies — 171
26. License taxes—telephone companies — 174
27. Licenses—general provisions concerning county licenses — 176
28. Licenses—furnishing trading stamps with sale of merchandise, Unconstitutional — 179
29. Licenses—hucksters — 180
30. Licenses—itinerant merchants — 181
31. Licenses—itinerant vendors — 185
32. Licenses—miscellaneous county — 188
33. Licenses—moving picture theaters, Repealed — 193
34. Licenses—produce wholesalers — 193
35. Licenses—public contractors — 199
36. Licenses—slot machines, Repealed — 204
37. Licenses—transient retail merchants — 204
38. Levy of taxes — 207
39. Uniform Federal Tax Lien Registration Act — 215
40. County assessor and county clerk—duties in relation to computation and entry of taxes — 216
41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands — 221
42. Collection of personal property taxes not a lien on real estate—road and poor taxes — 281
43. Collection of taxes by suit — 287
44. Settlement with state auditor and treasurer — 289

TITLE 84. TAXATION (Continued) Page

45. Protest payment of taxes—action to recover ---- 290
46. Banks—taxation ---- 299
47. Cities and towns—taxation and license ---- 302
48. Freight line companies—taxation ---- 317
49. Income tax ---- 322
50. Inheritance tax ---- 359
51. Insurance companies general property tax ---- 359
52. Livestock taxation ---- 360
53. Military servicemen—suspension of license fees ---- 367
54. Mines taxation—general property and net proceeds tax ---- 368
55. Lieu taxes on resettlement projects—requests for United States payment of ---- 381
56. Cigarette tax—licenses—stamps ---- 385
57. Punch boards, pull boards and similar devices—license ---- 402
58. Production credit associations—taxation ---- 403
59. Micaceous mineral mines—license taxes ---- 404
60. Migratory personal property—taxation ---- 407
61. United States property—taxation ---- 409
62. Mines or wells producing natural gas or petroleum—net proceeds tax ---- 410
63. Importers tax on gasoline purchased outside state and used in state ---- 414
64. Flight property of airline companies—assessment and taxation ---- 417
65. License taxes—racing associations ---- 420
66. Property tax on house trailers ---- 421

TITLE 84

TAXATION

Chapter 1. Definition of terms, 84-101.
2. Property subject to taxation—basis for taxation, 84-201 to 84-206.
3. Classification of property for taxation—basis for taxation, 84-301 to 84-308.
4. Assessment of property—powers, duties and liability of county assessor, 84-401 to 84-453.
5. Assessment book—form—contents—disposal, 84-501 to 84-515.
6. Equalization of taxes by county boards of equalization, 84-601 to 84-610.
7. Equalization of taxes and administration and supervision of all tax laws by state board of equalization, 84-701 to 84-735.
8. Railroads operating in more than one county—assessment franchise, etc. by state board of equalization, 84-801 to 84-804.
9. Telegraph, telephone, electric power and other lines—assessment by state board of equalization, 84-901 to 84-907.
10. License taxes—carbon black producers, 84-1001 to 84-1010.
11. License taxes—cement dealers, 84-1101 to 84-1114.
12. License taxes—cement and gypsum producers, 84-1201 to 84-1212.
13. License taxes—coal mines, 84-1301 to 84-1311.
14. License taxes—coal retailers, 84-1401 to 84-1417.
15. License taxes—corporation license tax, 84-1501 to 84-1519.
16. License taxes—electrical energy producers, 84-1601 to 84-1609.
17. License taxes—express companies, 84-1701 to 84-1709.
18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1801 to 84-1844.
19. License and other tax proceeds—how disposed of, 84-1901 to 84-1903.
20. License taxes—metalliferous mines, 84-2001 to 84-2016.
21. License taxes—natural gas distributors, 84-2101 to 84-2110.
22. License taxes—oil producers, 84-2201 to 84-2211.
23. License taxes—sleeping car companies, 84-2301 to 84-2310.
24. License taxes—store license, 84-2401 to 84-2413.
25. License taxes—telegraph companies, 84-2501 to 84-2508.
26. License taxes—telephone companies, 84-2601 to 84-2608.
27. Licenses—general provisions concerning county licenses, 84-2701 to 84-2708.
28. Licenses—furnishing trading stamps with sale of merchandise (84-2801 to 84-2804 Repealed), 84-2805 to 84-2812, Unconstitutional.
29. Licenses—hucksters, 84-2901 to 84-2907.
30. Licenses—itinerant merchants, 84-3001 to 84-3015.
31. Licenses—itinerant vendors, 84-3101 to 84-3109.
32. Licenses—miscellaneous county, 84-3201 to 84-3209.
33. Licenses—moving picture theaters, Repealed—Section 1, Chapter 33, Laws of 1957.
34. Licenses—produce wholesalers, 84-3401 to 84-3416.
35. Licenses—public contractors, 84-3501 to 84-3512.
36. Licenses—slot machines, Repealed—Section 5, Chapter 197, Laws of 1949.
37. Licenses—transient retail merchants, 84-3701 to 84-3708.
38. Levy of taxes, 84-3801 to 84-3810.
39. Uniform Federal Tax Lien Registration Act, 84-3901 to 84-3907.
40. County assessor and county clerk—duties in relation to computation and entry of taxes, 84-4001 to 84-4013.
41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4101 to 84-41-104.
42. Collection of personal property taxes not a lien on real estate—road and poor taxes, 84-4201 to 84-4217.
43. Collection of taxes by suit, 84-4301, 84-4302.
44. Settlement with state auditor and treasurer, 84-4401 to 84-4405.
45. Protest payment of taxes—action to recover, 84-4501 to 84-4505.
46. Banks—taxation, 84-4601 to 84-4605.
47. Cities and towns—taxation and license, 84-4701 to 84-4737.
48. Freight line companies—taxation (84-4801 to 84-4817 Superseded), 84-4818 to 84-4826.

49. Income tax, 84-4901 to 84-4958.
50. Inheritance tax, See TITLE 91, WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP, 91-4401 to 91-4467.
51. Insurance companies general property tax, 84-5101 to 84-5103.
52. Livestock taxation, 84-5201 to 84-5221.
53. Military servicemen—suspension of license fees, 84-5301.
54. Mines taxation—general property and net proceeds tax, 84-5401 to 84-5415.
55. Lieu taxes on resettlement projects—requests for United States payment of, 84-5501 to 84-5515.
56. Cigarette tax—licenses—stamps, 84-5601 to 84-5623.
57. Punch boards, pull boards and similar devices—license, 84-5701 to 84-5719.
58. Production credit associations—taxation, 84-5801.
59. Micaceous mineral mines—license taxes, 84-5901 to 84-5909.
60. Migratory personal property—taxation (84-6001 to 84-6007 Repealed), 84-6008 to 84-6014.
61. United States property—taxation, 84-6101 to 84-6104.
62. Mines or wells producing natural gas or petroleum—net proceeds tax, 84-6201 to 84-6215.
63. Importers tax on gasoline purchased outside state and used in state, 84-6301 to 84-6308.
64. Flight property of airline companies—assessment and taxation, 84-6401 to 84-6410.
65. License taxes—racing associations, 84-6501 to 84-6504.
66. Property tax on house trailers, 84-6601 to 84-6605.

CHAPTER 1

DEFINITION OF TERMS

Section 84-101. Definition of terms.

84-101. (1996) **Definition of terms.** Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First—The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Second—The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, subject to the provisions of section 84-5401, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all right and privileges appertaining thereto.

3. Improvements.

Third—The term "improvements" includes all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth—The term "personal property" includes everything which is the subject of ownership, not included within the meaning of the term "real estate" and "improvements."

Fifth—The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term "credit" means those solvent debts, secured or unsecured, owing to a person.

History: En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1939. Cal. Pol. C. Sec. 3617.

Classification of Property

This section determines the classification of property for purposes of taxation, and courts are limited by that classification in determining how property should be assessed. Helena Water Works Co. v. Settles, 37 M 237, 239, 95 P 838.

Individually owned shares of state bank stock are not "credits" as defined by subsection 6 of this section, and therefore may not properly be placed in class 5 of the Classification Act (84-301, 84-302), nor do they properly belong in class 6, which embraced only shares of national bank stock and moneyed capital owned by a bank and employed in its business, but in the absence of more specific provisions should go into class 7, as property not included in the preceding six classes under section 84-301 (prior to 1961 amendment). State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691.

Credit

Moneys due a bank from other banks are credits within the definition of the term given in this section. Clark v. Maher, 34 M 391, 400, 87 P 272.

An option to purchase real and personal property created no indebtedness which could be enforced, and, therefore, the amount due and unpaid under the contract was not a "credit," within the meaning of this section, namely, a solvent debt, which could properly be taxed. Read v. Lewis and Clark County, 55 M 412, 418, 178 P 177.

Improvements

The term improvement as used in the mechanics lien statute means an addition to the property, rather than repairs made on a building. Interstate Lumber Co. v. Rider, 93 M 489, 494, 19 P 2d 644.

Personal Property

Personal property owned by a national bank is not subject to taxation under state laws. First Nat. Bank v. Province, 20 M 374, 376, 377, 51 P 821.

For purposes of taxation a water right is personal property. Helena Water Works Co. v. Settles, 37 M 237, 239, 95 P 838.

Annual crops growing upon land are not part of the land under the statutes of this state, but where the owner of the land sells it with the right of immediate possession in the purchaser and without reserving the crop thereon and the purchaser takes possession before severance, title passes to the crop as well, and this principle is applicable where the land is sold at decretal or execution sale. Kester v. Amon, 81 M 1, 9, 261 P 288, distinguished in 121 M 245, 252, 191 P 2d 663.

Where an occupant of land, be he a purchaser, tenant or mere trespasser holding it adversely to the owner, plants and cultivates crops, they are his personal property provided he remains in possession until after they are harvested. Kester v. Amon, 81 M 1, 9, 261 P 288, distinguished in 121 M 245, 252, 191 P 2d 663.

Property

For the purposes of taxation, the word "property" includes "real estate," and within the definition of "real estate" is the possession of, claim to, ownership of, or right to the possession of land. State lands after sale, but before the price is fully paid, are subject to taxation as the property of the purchaser. Courtney v. Missoula County, 21 M 591, 593, 594, 55 P 359.

Stocks of a state bank or trust company fall within the definition of the term "property" as given in subsections 1 and 4 of this section. Daly Bank & Trust Co. v. Board of County Commrs., 33 M 101, 106, 81 P 950.

If unpatented mining claims are not taxable, it is not because they are not property within the definition of this section, but because they have been exempted from the general provisions of the revenue laws. Cobban v. Meagher, 42 M 399, 409, 113 P 290.

Real Estate

The provision of this section, that "the term 'real estate' includes the possession of, claim to, ownership of, or right to the possession of land," declares a rule independent of statute. Northern Pacific Ry. Co. v. Mjelde, 48 M 287, 294, 137 P 386.

Coal deposits underlying land form a part of the real estate within the definition of that term given in this section, and the reservation of those deposits in a deed, with the right to mine, constitutes an interest in real estate. Northern Pacific Ry. Co. v. Mjelde, 48 M 287, 137 P 386, explained in 54 M 96, 110, 169 P 5.

The right reserved in a deed of a railway company to such use of the surface of the land as may be found necessary for the exploration, mining and carrying away of the coal that may be found below is a valuable interest in the land itself, and as such properly subject to taxation under this section and section 84-201. The taxable value of the right to the use of the surface of the land for such purposes, omitting the deposit from the estimate, is to be ascertained as if the entire estate or land was vested in the grantee, the assessor to make an equitable apportionment of this value between the grantee and the railway company. Northern Pacific Ry. Co. v. Musselshell County, 54 M 96, 108, 169 P 53.

So long as petroleum and gas remain in the ground they are part of the realty and as such subject to the owner's control. Williard v. Federal Surety Co., 91 M 465, 471, 8 P 2d 633.

Value and Full Cash Value

All taxable property must be assessed at its full cash value, the terms "value" and "full cash value" being defined as "the amount at which property would be taken in payment of a just debt due from a solvent creditor." Wells Fargo & Co. v. Harrington, 54 M 235, 242, 169 P 463.

References

Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 425, 158 P 682; Cruse v. Fischl, 55 M 258, 265, 175 P 878; State ex rel. Rankin v. Harrington, 68 M 1, 17, 27, 217 P 681; State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 M 420, 425, 219 P 638; State v. Rarey, 72 M 270, 279, 233 P 615; Montana Nat. Bank v. Yellowstone County, 78 M 62, 252 P 876; Butte Electric Ry. Co. v. Brett, 80 M 12, 17, 257 P 478; State ex rel. Schoonover, 89 M 257, 270, 297 P 476; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; State ex rel. Tillman v. District Court, 101 M 176, 182, 53 P 2d 107; Corcoran v. State Board of Equalization, 116 M 499, 502, 154 P 2d 795; Klies v. Linnane, 117 M 59, 64, 156 P 2d 183; Rist v. Toole County, 117 M 426, 439, 441, 159 P 2d 340, 162 ALR 406.

Collateral References

Licenses⇨31 et seq.; Taxation⇨ 31 et seq.

53 C.J.S. Licenses § 50; 84 C.J.S. Taxation § 9.

51 Am. Jur. 34, Taxation, §§ 2-8.

Income or rental value as a factor in evaluation of real property for purposes of taxation. 96 ALR 2d 666.

CHAPTER 2

PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

Section 84-201. Property subject to taxation.
84-202. Exemptions from taxation.
84-203. Tax exemption of certain state lands used for water conservation projects.
84-204. Public property taxable when held under contract of sale or lease with option to purchase.
84-205 Assessment of public property to contract purchaser or lessee—attachment of lien.
84-206. Irrigation and drainage facilities taxable.

84-201. (1997) **Property subject to taxation.** All property in this state is subject to taxation, except as provided in the next section.

History: Ap. p. Sec. 1667, Comp. Stat. 1887; en. Sec. 1, p. 73, L. 1891; re-en. Sec. 3670, Pol. C. 1895; re-en. Sec. 2498, Rev. C. 1907; re-en. Sec. 1997, R. C. M. 1921. Cal. Pol. C. Sec. 3607.

Bank Property

The real estate, furniture and fixtures and moneyed capital of a state bank, constitute all its taxable property. East Helena State Bank v. Rogers, 73 M 210, 212, 236 P 1090.

Collateral Security

A mortgage regarded as collateral security belongs to the owner of the debt and is deemed to have no situs except that of the domicile of the owner, and, if owned by one not a resident of the state, is not property in the state, subject to taxation, and can only be assessed at the domicile or place of residence of the creditor, without regard to the domicile of the debtor. Holland v. Board of Commrs., 15 M 460, 462, 39 P 575. See also Monidah Trust v. Sheehan, 45 M 424, 430, 123 P 692.

Extent of Taxing Power

The taxing power of the state does not extend beyond its territorial limits. State

ex rel. Rankin v. Harrington, 68 M 1, 16 et seq., 217 P 681.

Personal Property

The maximum "mobilia sequuntur personam" as applied to determine the situs of personal property for purposes of taxation is not of universal application but must give way in the face of contrary facts. State ex rel. Rankin v. Harrington, 68 M 1, 16 et seq., 217 P 681.

Purpose of Statute

The provisions of the Political Code of 1895 (sections 3670 to 4083) relating to revenue, contain a scheme for assessment, equalization, and collection of taxes complete in itself, which is available for all taxing purposes for the state, county, and subdivision of counties. The fundamental idea of this scheme or plan is that there must be one tax roll for all purposes, and that the board of county commissioners must levy all taxes for the county and its subdivisions, except incorporated cities and towns which have ordinances providing for the assessment and collection of their own taxes. Hilburn v. St. Paul M. & M. Ry. Co., 23 M 229, 242, 58 P 551.

Reservation of Minerals

Where lands are sold with reservations in the grantor of minerals therein and the right to mine the same, as well as of a right of way over them for mining purposes, and for the removal of timber from adjoining lands, such reservations constitute property subject to taxation under this section and section 84-101. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 425, 158 P 682.

Securities of United States

The securities of the United States held by a bank are not taxable by the state directly or indirectly. Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876, reversed on other grounds 276 U S 499, 72 L Ed 673, 48 S Ct 331, 82 M 380, 267 P 304.

Separate Estates in Land

The separate estates which different persons may own in the same land, as where one owns the surface, another the growing timber, and a third the mineral underground, may each be subject to taxation, except such as specifically exempted. Northern Pacific Ry. Co. v. Mjelde, 48 M 287, 295, 137 P 386, explained in 54 M 96, 110, 169 P 53.

Shares of Stock

Shares of stock in foreign corporations owned by a legal resident of the state who, however, for all intents and purposes had left Montana and was doing business as a stock broker in the city of New York, which shares had never been within this state but were held and had their business situs in the state of New York, were not subject to taxation within this state. State ex rel. Rankin v. Harrington, 68 M 1, 16 et seq., 217 P 681.

Shares of stock, if within the state, whether belonging to residents or nonresidents are proper subjects of taxation. State ex rel. Rankin v. Harrington, 68 M 1, 16 et seq., 217 P 681.

Shares of stock in corporations are deemed intangible property taxable at the residence of their owner, except where there is such a combination of circumstances as produce what is referred to in the books as a business situs as distinguished from the domicile of the owner. State ex rel. Rankin v. Harrington, 68 M 1, 16 et seq., 217 P 681.

The state may tax a resident upon his stocks in foreign corporations which have no situs other than the domicile of their owner. State ex rel., Rankin v. Harrington, 68 M 1, 16 et seq., 217 P 681.

Where shares of stock are kept out of the state for the purpose of evading taxation they are not within the rule as to business situs but are controlled by the maxim mobilia sequuntur personam, and are taxable at the domicile of their owner. State ex rel. Rankin v. Harrington, 68 M 1, 16 et seq., 217 P 681.

To the extent that shares of stock of a bank have a value over and above the taxable real and personal property of the bank, they are taxable, under the constitutional command (sections 1 and 2, article XII) that all property, other than that specially exempted, must be taxed without reference to the character of the securities which go to make up that value. Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876, reversed on other grounds 276 U S 499, 72 L Ed 673, 48 S Ct 331, 83 M 380, 267 P 304.

National bank stock was not subject to tax where state bank stock was not taxed. Montana Nat. Bank v. Yellowstone County, 276 U S 499, 72 L Ed 673, 48 S Ct 331, reversing 78 M 62, 252 P 876.

References

Montana Coal & Coke Co. v. Livingston, 21 M 59, 52 P 780; Daly Bank & Trust Co. v. Board of County Commrs., 33 M 101, 106, 81 P 950; Cobban v. Meagher, 42 M 399, 407, 113 P 290; Northern Pacific Ry. Co. v. Musselshell County, 54 M 96, 108, 169 P 53; Cruse v. Fischl, 55 M 258, 263, 175 P 878; Homestake Exploration Corp. v. Shoregge, 81 M 604, 265 P 388; Simpson v. Silver Bow County, 87 M 83, 93, 285 P 195; Rosebud County v. Smith, 92 M 75, 9 P 2d 1071; Johnson v. Meagher County, 116 M 565, 567, 155 P 2d 750;

Foreman v. Beaverhead County, 117 M 557, 562, 161 P 2d 524.

Collateral References

Taxation⇐59 et seq.
84 C.J.S. Taxation § 59.
51 Am. Jur. 431, Taxation, § 408 et seq.

Books or records of title abstracts as subject of property taxes. 149 ALR 1038.
Taxation of self-service laundries. 87 ALR 2d 1007.
Taxing business of debt adjusting. 95 ALR 2d 1354.

84-202. (1998) **Exemptions from taxation.** The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

History: Ap. p. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1931; amd. Sec. 1, Ch. 85, L. 1965. Cal. Pol. C. Secs. 3607 and 3611.

Cross-References

Airport property, sec. 1-823.
Cemetery associations, tax exempt, sec. 9-118.
Fire department members exempt from poll tax, sec. 11-2004.
Mausoleum-columbarium property, exemption, sec. 9-803.
Militiamen exempt from poll tax, sec. 77-403.
Off-street parking facility bonds, exemption, sec. 11-3720.
Rural electric co-operatives, exemption from excise and income tax, sec. 14-528.
Teachers retirement system benefits, sec. 75-2713.
United States property held by private persons, taxation, secs. 84-6101 to 84-6104.
Water users' association, exemption, sec. 25-110.

Constitutionality

The provisions of this section, exempting property purchased with funds re-

ceived from the United States as pensions or compensation, are constitutional, being a valid exercise of legislative power. Henderson v. City of Missoula, 106 M 596, 602, 79 P 2d 547.

Assessments within Irrigation District —Not "Taxes"

Assessments for irrigation district purposes in their nature akin to special assessments for local improvements, are not "taxes" within the meaning of this section and section 2, article XII of the constitution declaring that state property shall be exempt from taxation, and state-owned lands within the district are subject to assessments levied by the district for district purposes. Toole County Irr. Dist. v. State, 104 M 420, 434, 67 P 2d 989.

Bank Stock

To the extent that shares of stock of a bank have a value over and above the taxable real and personal property of the bank they are taxable, under the constitutional provision that all property, other than that specially exempted, must be taxed, without reference to the character of the securities which go to make up that value. Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876, reversed on other grounds 276 U S 499, 72 L Ed 673, 48 S Ct 331, 82 M 380, 267 P 304.

Educational Purposes

The term "educational purposes" is not defined in terms of the common scholastic institutions of grammar school, high school, and university or college. Organizations for the social, intellectual, physical, or religious welfare of children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90, 93.

Evidence of Debt Secured by Mortgages

Chapter 64, Laws of 1929 (84-303 to 84-308), in providing that mortgages on real and personal property belonging to a banking institution shall be included in the computation looking to the ascertainment of the value of its moneyed capital and its shares of stock for taxation purposes, while others owning mortgages are exempt from taxation thereon, does not violate the state or federal constitutions. Bank of Miles City v. Custer County, 93 M 291, 298, 19 P 2d 885.

Property Leased for School Purposes

Under section 2, article XII of the Montana constitution and this section, ownership of property is of no importance. It is exempt from taxation if it is used exclusively for educational purposes. Northwestern Improvement Co. v. Rosebud County, 129 M 412, 288 P 2d 657, 659.

A school building, built by an improvement company and leased by it to a school district, wherein the school district was to pay any tax which might be assessed and wherein the amount of the lease just covered the cost of the building, was exempt from taxation. Northwestern Improvement Co. v. Rosebud County, 129 M 412, 288 P 2d 657, 659.

Property of a County

Where a city lot owned by the county is not used for county purposes and special municipal improvements enhance its value for building purposes, the county is liable for the payment of the consequent special assessments, constitutional and statutory provisions exempting its property from taxation not applying under such conditions. State ex rel. City of Great Falls v. Jeffries, 83 M 111, 115, 270 P 638.

Property of Charities

The provisions of the constitution and of this section, making certain property exempt from taxation, do not extend to a charitable institution as an association or corporate body, but only to such property of the institution as is used exclusively for charitable purposes, and the mere intention of such institution to devote certain of its lands to the erection of buildings for charitable purposes does not change the rule. Montana Catholic Missions v. County of Lewis and Clark, 13 M 559, 564, 565, 35 P 2.

A summer camp for children operated by a Methodist church was not exempt from taxation as an "institution of purely public charity." Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90, 93.

Property of School Districts

Assessments for special municipal improvements are not taxes; hence constitutional and statutory provisions exempting property from taxation are not applicable to such assessments. Under this rule the property of a school district, devoted exclusively to school purposes, in the absence of express constitutional or statutory exemption, is liable for assessments made for special municipal improvements. City of Kalispell v. School Dist. No. 5, 45 M 221, 228, 122 P 742. Compare with Ford v. City of Great Falls, 46 M 292, 308, 127 P 1004, in which the foregoing decision is commented upon and explained.

Property of the State

Lands to which the state retains the title under a contract of purchase are subject to taxation as property of the purchaser. Courtney v. Missoula County, 21 M 591, 55 P 359.

Under section 1868, R. C. M. 1921 (omitted), lands purchased from the state on deferred payments may be taxed only at the percentage of the value of the land which the amount actually paid bears to the total purchase price. Under section 2, article XII of the constitution and this section, state property is exempt from taxation. Instead of assessing only the interest of a purchaser of such lands represented by his initial payment, the assessor levied taxes upon them at their full cash value. Taxes paid by the state under protest on the value in excess of the equity the purchaser had in the land were illegally levied as upon state property. (Courtney v. Missoula County, 21 M 591, 55 P 359, distinguished.) State v. Lewis and Clark County, 84 M 204, 206, 274 P 855.

Under section 2, article XII of the constitution, and this section providing, inter alia, that state property is exempt from taxation, where the purchaser of state lands reconveyed them to the state to obviate foreclosure of the mortgage thereon, the lands were thereafter property of the state and nontaxable, entitling it to recover back taxes paid thereon under protest. State v. Lewis and Clark County, 84 M 204, 206, 274 P 855.

Property of the United States

Property belonging to the United States is exempt from special assessments, as well as from ordinary taxes, even in the absence of such provisions relative thereto as those found in the constitution or state laws. Ford v. City of Great Falls, 46 M 292, 308, 127 P 1004.

Property of a state bank represented by bonds of the United States is exempt from taxation under the supreme law of the land, irrespective of the fact that it is not made so by the state constitution or statutes. East Helena State Bank v. Rogers, 73 M 210, 218, 236 P 1090.

Property Purchased with United States Pension Funds

It was within the power of the legislature to declare it the policy of the state, based upon an admissible construction of the federal statutes in that behalf, that title to funds received from the United States as pension, etc., after their delivery to the guardian should remain in the United States, and that the benefit of such statutes should extend to real property purchased with such funds. Henderson v. City of Missoula, 106 M 596, 602, 79 P 2d 547.

Religious Education

Religious education is exempt from taxation as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90, 93.

State and County Bonds

State and county bonds held in private ownership within the state are "property," within the meaning of that term as employed in the constitution and revenue laws of the state, and, not being declared exempt, are taxable as such. Cruse v. Fischl, 55 M 258, 265, 175 P 878.

State May Tax Production under Lease of Trust Patent Indian Land

State board of equalization is authorized to tax the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 288, 54 P 2d 117, with exception of the royalty owner's net proceeds tax, for the reason that the federal supreme court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 359, 361, 116 P 2d 1012.

Strict Construction

The constitution expresses the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions; this section authorizing exemptions from taxation is therefore to be construed strictly; nothing is to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under the preceding section. Cruse v. Fischl, 55 M 258, 265, 175 P 878.

Summer Camp for Children

Where a Methodist church maintained some 28 improvements on 22 acres of land for a summer camp for children, the "exclusive" use of the premises was for "educational purposes" within the meaning of this section. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90, 93, 94.

United States Securities

The securities of the United States held by a bank are not taxable by the state, directly or indirectly. Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876, reversed on other grounds 276 U S 499, 72 L Ed 673, 48 S Ct 331, 82 M 380, 267 P 304.

References

Cobban v. Meagher, 42 M 399, 407, 113 P 290; Northern Pacific Ry. Co. v. Mjelde, 48 M 287, 295, 137 P 286; State ex rel. General Electric Co. v. Alderson, 49 M 29, 33, 140 P 82; Wells Fargo & Co. v. Harrington, 54 M 235, 240, 169 P 463; State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Commercial Nat. Bank v. Custer County, 76 M 45, 51, 245 P 259; State ex rel. Walker v. Jones, 80 M 574, 585, 261 P 356; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Foreman v. Beaverhead County, 117 M 557, 562, 161 P 2d 524.

Collateral References

Taxation⇨191.
84 C.J.S. Taxation § 215.
51 Am. Jur. 502, Taxation, § 495 et seq.

Constitutional exemption from taxation as subject to legislative regulation respecting conditions of its assertion. 4 ALR 2d 744.

Mortgage tax as applied to supplementary or amendatory instruments. 6 ALR 2d 306.

Property used by personnel as living quarters or for recreation purposes as within contemplation of tax exemptions extended to property for religious, educational, charitable, or hospital organizations. 15 ALR 2d 1064.

What is a "scientific institution" within property tax exemption provisions. 34 ALR 2d 1221.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution. 61 ALR 2d 1031, 1055, 1060, 1072, 1073.

College fraternity or sorority houses, constitutionality of statutes relating to exemption from taxation. 66 ALR 2d 910.

Church parking lots as entitled to tax exemptions. 75 ALR 2d 1106.

Tax exemption of Blue Cross, Blue Shield, or other hospital or medical service corporation. 88 ALR 2d 1414.

Exemption from taxation of property of agricultural fair society or association. 89 ALR 2d 1104.

Charitable, educational, or religious tax exemption of property held in trust for tax-exempt organization. 94 ALR 2d 626.

84-203. Tax exemption of certain state lands used for water conservation projects. All lands acquired and held by the state water conservation board or the state of Montana for use in connection with water conservation projects, constructed or to be constructed under the laws of this state, shall be exempt from taxation and it shall be the duty of the county treasurer to cancel all taxes remaining unpaid against said land for the year in which same is so acquired and for all previous years, provided, that such taxes shall be canceled only in such cases as no tax certificates shall have issued or a tax certificate has issued to the county and no assignment of such certificate of sale has been made by said county prior to the time when said land was acquired by said state water conservation board.

History: En. Sec. 1, Ch. 114, L. 1937.

Collateral References

Taxation⇨ 234.
84 C.J.S. Taxation § 279.

84-204. Public property taxable when held under contract of sale or lease with option to purchase. Property of the state of Montana or any department, agency or subdivision thereof or any other property not subject to ad valorem tax to the owner thereof by reason of the legal status of the owner held under contract of sale or lease with option to purchase with lease moneys applicable to purchase price by any person, corporation or other association for his or its exclusive use shall be subject to assessment to purchaser or lessee for ad valorem property taxation.

History: En. Sec. 1, Ch. 39, L. 1965.

Collateral References

Taxation⇨197.
84 C.J.S. Taxation § 253.

84-205. Assessment of public property to contract purchaser or lessee —attachment of lien. When such property is held under a contract of sale

or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, corporation or association, such property shall be assessed to such person, firm or corporation and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid; provided that the lien for such tax neither attach to, impair or be enforced against any interest of the state of Montana or any department, agency or subdivision thereof.

History: En. Sec. 2, Ch. 39, L. 1965.

84-206. Irrigation and drainage facilities taxable. All irrigation and drainage facilities including bonds, rights of way, ditches, flumes, pipelines, dams, water rights, reservoirs and other property of like character shall be taxed as like facilities of the federal and state government; in cases where property taxes apply, and where an increase in land value results, such facilities shall be taxed as such land is improved, and such land shall be classified for tax purposes as the tax classification law provides.

History: En. Sec. 1, Ch. 193, L. 1965.

CHAPTER 3

CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

Section 84-301. Classification of property for taxation.
84-302. Basis for imposition of taxes.
84-303. Moneys and credits defined for taxation purposes.
84-304. Moneyed capital defined for taxation purposes.
84-305. Deductions in determining moneyed capital.
84-306. Book value of real estate of national banks deducted in assessing shares.
84-307. Assessment of shares of state banks—deductions.
84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

84-301. (1999) **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used there-

with, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all watercraft, harness, saddlery and robes.

Class Three. Livestock, poultry and the unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith; and all office or hotel furniture and fixtures.

Class Four. All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract of purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five or Class Seven.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

Class Six. Property formerly included in this class is now classified by section 84-308.

Class Seven. All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961 within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify

its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. Any improvement on real property valued at not more than fifteen thousand dollars ($15,000), which is owned and actually occupied by a widow, with or without minor or dependent children, or by: (1) a widow 62 years of age or older, whether with or without minor or dependent children, or

(2) a widower 65 years of age or older, whether with or without minor or dependent children, or

(3) a widow with minor or dependent children regardless of age, or

(4) a recipient of retirement benefits not exceeding one hundred fifty dollars ($150) per month, if single, or two hundred fifty dollars ($250) per month if married. Provided such owner and occupier is not gainfully employed to such an extent as would render him or her ineligible for social security benefits, should he or she be otherwise eligible for such benefits, and does not have income from all sources, excluding retirement benefits as mentioned in (4) hereinabove, in excess of one thousand five hundred dollars ($1,500) per year. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a form as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with none other than his or her spouse, minor or dependent children, or persons not responsible for all or any part of the financial support of the affiant, and that the improvements are not used for income-producing purposes other than such purposes as are normally permitted in or on such improvements, with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. All property not included in the eight preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957; amd. Sec. 1, Ch. 103, L. 1961; amd. Sec. 2, Ch. 239, L. 1961; amd. Sec. 1, Ch. 168, L. 1965.

Cross-Reference

Motor vehicle tax, secs. 53-620, 53-624, 53-626, 53-627, 53-632 and 53-633.

Constitutionality

This section, providing for the classification of property for purposes of taxation, does not infringe upon the guaranty of the equal protection of the laws. Hilger v. Moore, 56 M 146, 182 P 477.

Bank Shares and Capital

A tax upon the moneyed capital of a state bank imposed under the Classification Act is a property tax and not an occupation or franchise tax. East Helena State Bank v. Rogers, 73 M 210, 211 et seq., 236 P 1090.

All bank shares and "money capital," of banks are subject to the same classification. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 908.

Credits and Receivables in Business of Financing Motor Vehicles, Refrigerators, Etc.

Solvent credits and receivables owned by a foreign corporation in the business of financing sales of motor vehicles, re-

frigerators, etc. showing annually earned net profits, were intangibles having a business situs in Montana and subject to taxation in Montana. Commercial Credit Co. v. O'Brien, 115 M 199, 212, 146 P 2d 637, appeal dismissed 323 U S 665, 89 L Ed 541, 65 S Ct 75.

Determination of Classification

For the purposes of taxation, the use to which property is devoted and its productivity make up the measuring stick for determining its proper classification,—a matter within the power of the legislature. Bank of Miles City v. Custer County, 93 M 291, 301, 19 P 2d 885.

The basis for classification of the thing classified for taxation purposes need not be deducible from its nature, and discrimination merely is not inhibited, since there are discriminations which the best interests of society require. Bank of Miles City v. Custer County, 93 M 291, 301, 19 P 2d 885.

When there is a difference between various properties, it need not be great or conspicuous in order to warrant classification by taxing officer; for that purpose there is a difference in the doing of business and its results. Bank of Miles City v. Custer County, 93 M 291, 301, 19 P 2d 885.

Equalization of Assessment of Properties

The state board of equalization has the power and the duty to equalize the assessment of properties at a percentage of their market value. State ex rel. State Board of Equalization v. Vanderwood, — M —, 405 P 2d 652, 657.

Under section 15, article XII of the Montana constitution, the state board of equalization has authority to assign different percentages as an equalization factor for types of property within a statutory class for assessment purposes. State ex rel. State Board of Equalization v. Vanderwood, — M —, 405 P 2d 652, 657.

Implements and Machinery

Machinery and electric appliances located in a substation and used by a railway company in the transformation of electric current employed in the propulsion of its trains, and engine pumps and pipes used for the pumping of water for use in the substation shop, machinery and movable shop tools used for repairing equipment, properly fall within class 2 of this section and section 84-302, and within the designation "implements and machinery" and are therefore assessable at 20 per cent of their true value, and not within class 4. Chicago, M. & St. Paul Ry. Co. v. Powell County, 76 M 596, 597, 247 P 1096.

Machinery Used for Generating Electricity for Railroad Purposes

Coal-burning steam boilers, electrical generators, etc., owned and used by a railway company in generating electricity for power purposes in its repair shops and for lighting its yards, depot and offices, but not marketed or sold for profit, fall within class 2 of this section, and as such are taxable at 20 per cent of their actual value (84-302), and not within class 4 as "manufacturing machinery" taxable at 30 per cent of its value. Chicago, M., St. Paul & Pac. R. Co. v. Custer County, 96 M 566, 569, 32 P 2d 8.

Manufacturing Machinery

While machinery capable of being used for and actually used in the generation of electricity as a business falls within the designation of "manufacturing machinery," within the meaning of this section, classifying property for purposes of taxation, it is the use to which it is devoted and its productivity which fix the rate of taxation. Chicago, M., St. Paul & Pac. R. Co. v. Custer County, 96 M 566, 569, 32 P 2d 8.

Mining Property

Coal lands purchased from the federal government must be taxed under section 3, article XII of the constitution, at the price paid therefor and not at 30 per cent of such purchase price, the rate at which real property is taxable under the Classification Act. State ex rel. Hinz v. Moody, 71 M 473, 476, 230 P 575.

Pipelines

Pipelines should be classified in class 7 (now class 9) of this section. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 69, 71.

Situs for Taxing Solvent Credits and Accounts Receivable

Where intangible property such as solvent credits or accounts receivable (automobile and refrigerator conditional sales contracts, etc.) are created and used in the conduct of a business by the owner in a state other than his domicile, such property has, for taxing purposes a situs in the state where such business is conducted, irrespective of the domicile of the owner, and the legal fiction expressed in the maxim mobilia sequuntur personam—movables follow the person—does not apply. Commercial Credit Co. v. O'Brien, 115 M 199, 214, 146 P 2d 637, appeal dismissed 323 U S 665, 89 L Ed 541, 65 S Ct 75.

Taxing Motor Vehicles

Assertion that the legislature, in amending sections 53-114 and 84-406 by enacting

chapter 72, Laws of 1937, making special provisions for taxing automobiles included in class 2 of this section, among other property without express amendment, singled out motor vehicles for special consideration and unlawfully discriminated against them, was not well made, since legislature may properly place identical articles in the hands of different owners, different uses resulting in different productivity. Wheir v. Dye, 105 M 347, 354, 73 P 2d 209.

Tools, Implements and Machinery Not Used in Manufacture of Article of Trade

Tools, implements and machinery employed as an aid to the operation of a business not devoted to the manufacture of an article of trade, fall properly within class 2 of this section, and as such are taxable at 20 per cent of their actual value, under section 84-302. Chicago, M., St. Paul & Pac. R. Co. v. Custer County, 96 M 566, 569, 32 P 2d 8.

References

First Nat. Bank v. County of Dawson, 66 M 321, 334, 213 P 1097; Wibaux Improvement Co. v. Breitenfeldt, 67 M 206, 208, 215 P 222; State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Heckman v. Custer County, 70 M 84, 85, 223 P 916; Montana Nat. Bank v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876; Homestake Exploration Corp. v. Schoregge, 81 M 604, 613, 264 P 388; First Nat. Bank v. Sanders County, 85 M 450, 453, 279 P 247; State ex rel. Henderson v. Dawson County, 87 M 122, 138, 286 P 125; State ex rel. Schoonover v. Stewart, 89 M 257, 271, 297 P 476; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Merchants' Nat. Bank v. Dawson County, 93 M 310, 333, 19 P 2d 892; Fruit Growers Express Co. v. Brett, 94 M 281, 290, 22 P 2d 171; British-American Oil producing Co. v. State Board of Equalization, 101 M 293, 300, 54 P 2d 129; Northern Pacific Ry. Co. v. Dunham, 108 M 338, 343, 90 P 2d 506; Rist v. Toole County, 117 M 426, 441, 159 P 2d 340, 162 ALR 406; New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1020.

Collateral References

Taxation⇨42 (1-4), 61 et seq.

84 C.J.S. Taxation §§ 36, 37, 66.

51 Am. Jur. Taxation, p. 230, § 173 et seq.; p. 431, § 408 et seq.

Situs of vessel for tax purposes. 26 ALR 2d 1376.

Conflict of laws as to taxation of partnership property. 29 ALR 2d 312.

Application of "blockage rule" or "blockage discount theory" in determining stock valuation, for purposes of taxation of intangibles. 33 ALR 2d 607.

Solid mineral royalty as real or personal property for tax purposes. 68 ALR 2d 734.

DECISIONS UNDER FORMER LAW

Constitutionality

The classification law (sections 1999 and 2000, R. C. M. 1921), placing national bank stock in class 6, calling for an assessment of 40 per cent of its true value, and moneyed capital coming into competition with the business of national banks in class 5, demanding an assessment of only 7 per cent of its true value, contravenes the provisions of section 5219, U. S. Rev. Stat., and to that extent the classification law is invalid. State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691.

1951 Amendment Unconstitutional

Chapter 178 of Laws of 1951 is an unconstitutional exercise of the legislative function to classify property for taxation. Victor Chemical Works of Silver Bow County, 130 M 308, 301 P 2d 730, 737. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.) Distinguished in 137 M 198, 206, 351 P 2d 904.

Chapter 178 of Laws 1951, by permitting the reclassification of some industrial property into Class 5 while similar property is in Class 4 thwarts the mandate of sections 1 and 11, article XII of the constitution and is invalid. Victor Chemical Works v. Silver Bow County, 130 M 308, 301 P 2d 730. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.) Distinguished in 137 M 198, 206, 351 P 2d 904.

Improvements

Improvements of a railroad right of way for purposes of taxation fall within class 4 of this section, providing for taxation of all land, with improvements thereon, and therefore are assessable at 30 per cent of their true and full value under section 84-302, and not within class 7 embracing all property not included in the preceding six classes, and assessable at 30 per cent of their true value. State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 M 420, 423, 219 P 638.

Law Governing

In the matter of refunding the state educational bonds under chapter 23, Laws of 1931 (omitted), the issuance and sale of which were originally authorized by initiative measure No. 19, effective December 6,

1920, providing for their payment an annual levy at a given rate on each dollar of the assessed valuation of the taxable property in the state, measure No. 19 held a special act and as such controlling over the general classification act (this section and section 84-302) approved February 28, 1919 (chapter 51, Laws of 1919), and which prescribes the taxable value, at a certain percentage of the assessed value, as the basis of taxation. State ex rel. Judd v. Cooney, 97 M 75, 79, 32 P 2d 851, distinguished in 108 M 338, 346, 90 P 2d 506.

Railroad Ties

The term supplies, used in this section in declaring that machinery, fixtures and supplies shall fall under class 4 of the property designated therein for taxation purposes, was employed in its ordinary sense, and railroad ties kept on hand for replacement or new construction fall fairly within its meaning. They were not subject to assessment under class 7, comprising all property not included in the six preceding classes, and taxable at a higher rate than that enumerated in class 4. Northern Pacific Ry. Co. v. Sanders County, 66 M 608, 610, 214 P 596.

Shares of State Banks

Individually owned shares of state bank stock are not "credits" as defined by subsection 6 of this section, and therefore may not properly be placed in class 5 of the Classification Act; nor do they properly belong in class 6, which embraces only shares of national bank stock and moneyed capital owned by a bank and employed in its business, but in the absence of more specific provision should go into class 7, as property not included in the preceding six classes. State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691.

In an action to enjoin tax officials from placing stock of shareholders of a state bank in class 6 of this section, while placing national bank shares in class 5, although action of tax official was discriminatory against relator bank, and therefore void being in violation of section 11, article XII of the state constitution, requiring taxes to be uniform upon the same class of subjects, and the court ordered assessor to amend records to assess shares in class 5 instead of class 6, relator having asked that state bank shares be placed in the same class in which national bank shares were placed, and the taxing officers under the circumstances not being in position to object, it was proper to so place them, the question whether the tax officials could arbitrarily place such shares in class 5 being, however, reserved. State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691.

Street Railway Tracks, Poles and Trolley Wires

The constituent parts of a street railway track, poles and trolley wires are personal property and taxable as such under the Classification Act, falling within class 7, at 40 per cent of their true and full value as property not included in the preceding six classes. Butte Electric Ry. Co. v. Brett, 80 M 12, 257 P 478.

Tailings Dump

Tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine." Foreman v. Beaverhead County, 117 M 557, 559, 561, 161 P 2d 524.

Tailings dump containing valuable minerals was taxable as personal property in class 7. Foreman v. Beaverhead County, 117 M 557, 559, 561, 161 P 2d 524.

84-302. (2000) **Basis for imposition of taxes.** As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100%) of its true and full value.

Class 2. Twenty per cent (20%) of its true and full value.

Class 3. Thirty-three and one-third per cent (33⅓%) of its true and full value.

Class 4. Thirty per cent (30%) of its true and full value.

Class 5. Seven per cent (7%) of its true and full value.

Class 6. Forty per cent (40%) of its true and full value.

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Twenty per cent (20%) of its true and full value.

Class 9. Forty per cent (40%) of its true and full value.

History: En. Sec. 2, Ch. 51, L. 1919; re-en. Sec. 2000, R. C. M. 1921; amd. Sec. 3, Ch. 239, L. 1961; amd. Sec. 2, Ch. 168, L. 1965.

NOTE.—See annotations under section 84-301, as these two sections are cited and construed together.

Constitutionality

This section is not invalid as in violation of the principle of uniformity of taxation declared by section 1, article XII of the constitution of Montana. Hilger v. Moore, 56 M 146, 182 P 477.

References

Northern Pacific Ry. Co. v. Dunham, 108 M 338, 343, 90 P 2d 506; Commercial Credit Co. v. O'Brien, 115 M 199, 215, 146 P 2d 637; Rist v. Toole County, 117 M 426, 441, 159 P 2d 340, 162 ALR 406; New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 248 P 2d 1012, 1020.

Collateral References

Taxation⇐42 (1-4), 347.
84 C.J.S. Taxation §§ 36, 37, 410.
51 Am. Jur. 431, Taxation, § 408 et seq.

Inclusion of investments in stock of other corporations in fixing base for taxation of corporation, as double taxation. 11 ALR 2d 323.

84-303. (2000.1) **Moneys and credits defined for taxation purposes.** That moneys and credits are hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined, and all credits secured and unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that credits, as herein defined, shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana.

History: En. Sec. 1, Ch. 64, L. 1929.

Constitutionality

The legislature, in enacting chapter 64, Laws of 1929 (84-303 to 84-308), classifying moneys and credits for purposes of taxation, properly exercised its power, as against the contention of a state bank that such a classification is invalid under section 11, article XII of the state constitution and the fourteenth amendment to the federal constitution, since moneys and credits, when employed in the banking business, have a greatly increased productivity as compared to moneys and credits in the hands of the ordinary individual or corporation using them for casual investment only. Bank of Miles City v. Custer County, 93 M 291, 309, 19 P 2d 885.

This section, in providing that mortgages on real and personal property belonging to a banking institution shall be included in the computation looking to the ascertainment of the value of its moneyed capital and its shares of stock for taxation purposes, while others owning mortgages are exempt from taxation thereon (84-202), does not violate either state or federal constitution. Bank of Miles City v. Custer County, 93 M 291, 309, 19 P 2d 885.

Chapter 64, Laws of 1929 (84-303 to 84-308), is not unconstitutional as conferring judicial discretion upon the assessor in failing to prescribe a definite rule for determining when moneyed capital comes in competition with banks. Bank of Miles City v. Custer County, 93 M 291, 309, 19 P 2d 885.

Chapter 64, Laws of 1929 (84-303 to 84-308) and chapter 64, Laws of 1927 (84-4605), so far as they relate to taxation of moneyed capital and shares of stock of state banks, in requiring reports for purposes of assessment by a banking corporation, though none is required from owners of competing capital, are not special laws in contravention of section 26, article V of the constitution, the taxing officers under other provisions of law having authority to call for such reports. Bank of Miles City v. Custer County, 93 M 291, 309, 19 P 2d 885.

Since the law provides for the taxation of the shares of all corporations, contention by a bank that it does not and that, for that reason, this section, in subjecting its shares to assessment, is invalid as discriminatory, was without merit. Bank of Miles City v. Custer County, 93 M 291, 309, 19 P 2d 885.

The provisions of sections 84-303 to 84-308, for the taxation of banking institutions, are not invalid as delegating to taxing officers judicial powers, by failing to prescribe a definite and certain guide by which to determine when moneys and credits do or do not come in competition with the business of a national bank. Merchants' Nat. Bank v. Dawson County, 93 M 310, 316 et seq., 19 P 2d 892.

The provisions of sections 84-303 to 84-308, in providing for the classification of moneyed capital, and imposing certain duties upon the assessor, do not violate the constitution. They deal only with one subject, i. e., the taxation of a certain class of property, the classification and assessment relating directly to that subject. Merchants' Nat. Bank v. Dawson County, 93 M 310, 316 et seq., 19 P 2d 892.

National Bank Stock

In the absence of an allegation in the complaint of a national bank in a tax suit that any of its shareholders were indebted to it, it will not be heard on appeal to assert that it was discriminated against in the matter of taxation of its stock, in that members of building and loan associations were, under chapter 64, Laws of 1929 (84-303 to 84-308), permitted to deduct their debts from the amounts standing to their credit on the books of the associations, in determining the value of their stock, while the same privilege was not extended to the bank's shareholders with relation to their debts due the bank. Merchants' Nat. Bank v. Dawson County, 93 M 310, 316 et seq., 19 P 2d 892.

Securities of United States

While a statute, the principal purpose of which is to tax indirectly securities of the United States, is invalid, the indirect taxing thereof which may result from taking such securities into consideration in determining the value of bank stock, together with the other assets of the bank, in conformity with this section, is not violative of the federal statutes exempting such securities from taxation. Bank of Miles City v. Custer County, 93 M 291, 309, 19 P 2d 885.

References

Commercial Credit Co. v. O'Brien, 115 M 199, 215, 146 P 2d 637.

Collateral References

Taxation⇨73, 74.
84 C.J.S. Taxation §§ 79, 85.

84-304. (2000.2) **Moneyed capital defined for taxation purposes.** Moneyed capital is hereby defined as moneys, bonds, notes and other evidence of indebtedness, including evidences of indebtedness secured by mortgage on real or personal property in the hands of individual citizens and corporations coming in competition with the business of national banks or employed in conducting a banking or investment business; provided, however, that bonds, notes and other evidence of indebtedness in the hands of individuals and corporations not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital.

History: En. Sec. 2, Ch. 64, L. 1929.

84-305. (2000.3) **Deductions in determining moneyed capital.** In assessing and ascertaining the value of moneyed capital for taxation, there shall be deducted from the amount of bonds, notes, and other evidence of indebtedness the amount of any deposits and any indebtedness representing money borrowed for use as moneyed capital.

History: En. Sec. 3, Ch. 64, L. 1929.

Collateral References

Taxation⇨378 (1).
84 C.J.S. Taxation § 447.

84-306. (2000.4) **Book value of real estate of national banks deducted in assessing shares.** In ascertaining the value of the shares of a national bank for the purpose of taxation there shall be deducted the book value of all real estate of said bank, which shall be assessed to said bank.

History: En. Sec. 4, Ch. 64, L. 1929; amd. Sec. 1, Ch. 34, L. 1939.

Constitutionality

Chapter 34, Laws of 1939, which amended this section, was not open to the objection that it offends against section 17, article XII of the state constitution. Miners Nat. Bank of Butte v. County of Silver Bow, 116 M 31, 38, 148 P 2d 538.

Statement of Bank to Taxing Authorities

This opinion sets forth what a bank's statement may show as undivided profits in adding to ledger balance including cur-

rent earnings, interest accrued but not paid, expense accrued but not paid, interest collected but not earned, and deducting total of interest earned but not collected; when refusal of taxing authorities to permit deduction of unearned interest on long-term notes justifiable, and when bank setting up reserve to make good possible losses on bonds and stocks improper, particularly where not all such securities depreciated in value. Miners Nat. Bank of Butte v. County of Silver Bow, 116 M 31, 39, 41, 148 P 2d 538.

Tax on Bank Stock Calculated by Deduction of Book Value of Real Estate Rather Than Assessed Value

Under this section, the county assessor, in calculating the value of the shares of stock of a national bank for taxation purposes, properly deducted the book value of its real estate, consisting of its bank building and fixtures, as fixed by bank examiners, from the total of its capital stock surplus and undivided profits, rather than deducting the actual or assessed value of the property. Miners Nat. Bank of Butte v. County of Silver Bow, 116 M 31, 34, 148 P 2d 538.

Collateral References

Taxation⇨386 (2).
84 C.J.S. Taxation § 424.

84-307. (2000.5) **Assessment of shares of state banks—deductions.** The shares of all state banking corporations engaged in the banking business in Montana shall be valued and assessed for the purpose of taxation at the full cash value thereof, less the value of the real estate, moneyed capital and other property of any such bank assessed and taxed as the property of said bank.

History: En. Sec. 5, Ch. 64, L. 1929.

84-308. (2000.6) **Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state board of equalization shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

History: En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957.

Effect of Amendment

Laws 1957, chapter 172, which amended this section does not result in remitting, releasing, or diminishing an "obligation or liability" held or owned by the state or city. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 908.

Parties to Action for Taxes

Where the banks of county paid their 1957 taxes in accordance with the taxable value determined under this section before amendment by Laws of 1957, chapter 172, as a part of a compromise settlement, an action by the state on relation of the county was dismissed as moot where banks of county were not made parties to the action. State ex rel. Cascade County v. Ryan, 137 M 379, 351 P 2d 916, 918.

Collateral References

Taxation⇨351.
84 C.J.S. Taxation § 412.

CHAPTER 4

ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

Section 84-401. Property assessed at cash value.
84-402. Assessor to determine and show percentage basis and taxable value computed thereon.
84-403. Appeal for taxpayer aggrieved at percentage assignment.
84-404. State board of equalization to assign percentage basis, when.
84-405. Assessor's blanks and rolls to be provided by state board.
84-406. Time of assessment—motor vehicles—livestock.
84-407. Repealed.
84-408. Repealed.
84-409. Statement—what to contain.
84-410. County commissioners to furnish blanks, etc.
84-411. Statement to be filled out and returned to assessor.
84-412. General powers of assessor.
84-413. Method of making assessment upon refusal of statement.
84-414. Assessment of unknown or absent owners.
84-415. Assessment of unknown or absent owners—in whose name property to be assessed.
84-416. Repealed.
84-417. Consigned property.
84-418. Trustees, guardians, executors, etc.
84-419. Property of a firm or corporation—where assessed.
84-420. Undistributed property of deceased persons.
84-421. Capital stock and franchises of corporations—where assessed.
84-422. Personal property of merchant or manufacturer.
84-423. Property of express and stage companies, etc.
84-424. Gas and water companies.
84-425. Gas and water mains.
84-426. Street railroads, bridges and ferries.
84-427. Assessment of railroads, telegraph, telephone and electric light lines.
84-428. Railroads—how assessed.
84-429. Land—how assessed.
84-429.1 to 84-429.6. Repealed.
84-429.7. Classification and appraisal—duties of county commissioners.
84-429.8. Classification and appraisal fund—tax levy for.
84-429.9. Assessments to be made on classification and appraisal.
84-429.10. Initiation and completion of classification and appraisal.
84-429.11. Notice of classification and appraisal to owners—appeals.
84-429.12. Classification and appraisal—general and uniform methods.
84-429.13. Work done under prior law.
84-430 to 84-437. Repealed.
84-438. Property and money in litigation.
84-439. Property concealed, misrepresented, etc.
84-440. Property having escaped assessment.
84-441. Supplemental assessment.
84-442. Assessment not illegal for informality or delay.
84-443. Deputies for assessors.
84-444. Traveling expenses of assessor and deputies.
84-445. Assessors liable for unassessed property.
84-446. County attorney must prosecute.
84-447. Judgment—when entered against assessor.
84-448. Annual settlements.
84-449. County assessor to collect farm statistics.
84-450. Delivery to commissioner of agriculture.
84-451. Statistics, how obtained.
84-452. Penalty for refusal to furnish statistics.
84-453. Penalty for neglect of act by officer.

84-401. (2001) **Property assessed at cash value.** All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R. C. M. 1921. Cal. Pol. C. Sec. 3627.

Assessment of Pipelines

The state board of equalization did not act arbitrarily or capriciously in assessing pipeline at 50 per cent of the current replacement cost, even though there was an increase in the assessed value of the property over the preceding year. Treasure State Pipe Line Co. v. County of Toole, 136 M 108, 345 P 2d 162.

Bank Stock

The stock of a national bank is assessable at its full cash value, less the amount of property representing that stock which has been otherwise taxed. Dennis v. First Nat. Bank of Great Falls, 55 M 448, 456, 178 P 580.

Compliance with Statute

This section is complied with so long as the same type of property bears the same proportion of tax base. State ex rel. State Board of Equalization v. Vanderwood, — M —, 405 P 2d 652, 657.

Construction of Section

This section is not in anywise affected by section 84-901 et seq., and is to be considered in connection with them. State v. State Board of Equalization, 56 M 413, 444, 185 P 708.

Equalization of the Assessment of Properties

The state board of equalization has the power and the duty to equalize the assessment of properties at a percentage of their market value. State ex rel. State Board of Equalization v. Vanderwood, — M —, 405 P 2d 652, 657.

Interest in Real Estate

The difficulty which may confront the assessor in ascertaining the full cash value of an interest in real estate reserved by the grantor in himself in a deed conveying the land may not be taken into account in determining whether such interest is subject to taxation. Northern Pacific Ry. Co. v. Mjelde, 48 M 287, 304, 305, 137 P 386.

Mandamus

A county may be compelled by a writ of mandate to comply with a directive of the state board of equalization although nine other counties have not yet followed the board's directive. State ex rel. State Board of Equalization v. Vanderwood, — M —, 405 P 2d 652, 658.

References

First Nat. Bank v. Province, 20 M 374, 376, 51 P 821; Danforth v. Livingston, 23 M 558, 59 P 916; State ex rel. State Board of Equalization v. Fortune, 24 M 154, 157, 60 P 1086; Daly Bank & Trust Co. v. Board of County Commrs., 33 M 101, 81 P 950; State ex rel. General Electric Co. v. Alderson, 49 M 29, 33, 140 P 82; Wells Fargo & Co. v. Harrington, 54 M 235, 242, 169 P 463; Hilger v. Moore, 56 M 146, 166, 182 P 477; State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 M 420, 219 P 638; Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; Bettey v. City of Sidney, 79 M 314, 322, 257 P 1007; State ex rel. Schoonover v. Stewart, 89 M 257, 270, 297 P 476; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; State ex rel. Judd v. Cooney, 97 M 75, 79, 32 P 2d 851; Rist v. Toole County, 117 M 426, 441, 159 P 2d 340, 162 ALR 406.

Collateral References

Taxation⇦347.

84 C.J.S. Taxation § 410.

51 Am. Jur., Taxation, p. 614, § 647 et seq.; p. 648, § 696 et seq.; p. 705, § 780 et seq.

Power of board of tax review to receive evidence as to assessable value without notice to taxpayer. 113 ALR 990.

Price paid or received by taxpayer for property as evidence of its value for tax purposes. 160 ALR 684.

Who may complain of underassessment or nonassessment of property for taxation. 5 ALR 2d 576.

Method of calculating value of stock of goods or the like for the purpose of tangible personal property tax. 66 ALR 2d 833.

84-402. (2001.1) **Assessor to determine and show percentage basis and taxable value computed thereon.** The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the county assessors of the various counties of the state of Montana, and the taxable value thereupon computed when they make their annual assessments, and copies of such assessments as provided for in section 84-411 shall

show the taxpayer the percentage class to which the assessor has assigned his various classes of property for taxation and the taxable valuation thereof.

History: En. Sec. 1, Ch. 61, L. 1925; amd. Sec. 1, Ch. 100, L. 1939.

References

Chicago, M. & St. Paul Ry. Co. v. Powell County, 76 M 596, 600, 247 P 1096.

Collateral References

Taxation⊂320.
84 C.J.S. Taxation § 402.

84-403. (2001.2) **Appeal for taxpayer aggrieved at percentage assignment.** If any taxpayer shall feel aggrieved at the percentage assignment so made by the county assessor, he shall have the right to appeal to the county board of equalization, on the percentage assignment the same as he now has on valuations, and also, the right to appeal from the county board of equalization to the state board of equalization, whose findings shall be final except as to, the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925.

References

Carlson v. Flathead County, 130 M 36, 293 P 2d 279, 282.

Collateral References

Taxation⊂459.
84 C.J.S. Taxation § 514.

84-404. (2001.3) **State board of equalization to assign percentage basis, when.** The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the state board of equalization, when it makes its annual assessment of the property, which it is required to assess under the constitution or the laws of this state and shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination shall be final except as to the right of review in the proper court.

History: En. Sec. 3, Ch. 61, L. 1925.

References

Carlson v. Flathead County, 130 M 36, 293 P 2d 279, 283.

Collateral References

Taxation⊂450 (2), (3).
84 C.J.S. Taxation § 503.

84-405. (2001.5) **Assessor's blanks and rolls to be provided by state board.** It shall be made the duty of the state board of equalization to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll.

History: En. Sec. 5, Ch. 61, L. 1925.

Collateral References

Taxation⊂412.
84 C.J.S. Taxation § 456.

84-406. (2002) **Time of assessment—motor vehicles—livestock.** (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or

claimed, or in whose possession or control it was at twelve o'clock m. of the first Monday of March next preceding, except that such procedure shall not apply to

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may by subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(2) The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock m. of the first day of January in each year.

Nothing herein contained shall relieve the applicant for registration or reregistration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or reregistration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965. Cal. Pol. C. Sec. 3628.

Cross-References

Ascertainment of number of sheep, sec. 41-2102.

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

Capital Stock of Corporation

The authorized capital stock of a corporation engaged solely in a general real estate business, and which does not own any of its capital stock, was not taxable, as such, against the corporation. Butte Land & Investment Co. v. Sheehan, 44 M 371, 372, 120 P 241. See note to section 7, article XII of the constitution of Montana.

Delinquent Tax Sale

The assessment and sale of property for delinquent taxes is a proceeding in invitum; the purchaser at such sale buys at his peril, and the rule of caveat emptor applies. Birney v. Warren, 28 M 64, 68, 72 P 293; Larson v. Peppard, 38 M 128, 133, 99 P 136.

Federal Government Immune When Holding Equitable Title, and It or Its Vendor May Recover Taxes Paid

When the United States entered into an enforceable option contract for the purchase of land in April, 1938, and in June it exercised the option, took possession and made extensive improvements, the formal deed not being delivered until Nov. 1939, it paid the taxes for the year 1939 under protest, under a clause that it might do so, deducted them from the purchase price, and assigned its claim to recover them back to the vendor. In vendor's action to recover the taxes, the government, being holder of the equitable title, was owner for purposes of taxation, immune for the year in question, and plaintiff assignee was entitled to recover taxes paid. Calvin v. Custer County, 111 M 162, 168, 107 P 2d 134.

Individual Assessment

Only individual assessment by individual ownership will satisfy this section.

Vail v. Custer County, 132 M 205, 315 P 2d 993, 998.

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under section 84-4151. Vail v. Custer County, 132 M 205, 315 P 2d 993, 999.

Limitation of Action

Irrigation district's purported special assessments for 1921 through 1926 and the collection of water district charges due thereunder in 1949 was barred by the provisions of section 89-1804, subsection (5). Vail v. Custer County, 132 M 205, 315 P 2d 993, 1000.

Meaning of "Assess"

Where the legislature has clearly adopted a definition of a word used in a statute at variance with that found in dictionaries and court decisions, the supreme court will follow the definition as found in the statute. Under this rule the word "assess" as used in this section had the same meaning as in section 2002.1, R. C. M. 1935, now repealed. State ex rel. State Board of Equalization v. Jacobson, 107 M 461, 464, 86 P 2d 9.

Mining Rights

Where an assessor listed for taxation lands with the reservation of minerals, mining rights, etc., to the grantee for the full cash value, and at the same time, assessed the grantor's reservations at a certain amount per acre, it was deemed to be a case of double taxation. The grantor was in no position to complain of the double assessment, however, as the only person who could do so was the one who was made to bear more than his proportion of the burden of taxation. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 425, 158 P 682.

Misnomer

The listing of land in the name of a person other than the owner is not an irregularity or informality which, of itself, does not avoid the assessment nor render the tax illegal or unauthorized, and affords no ground for restraining the collection, by sale of the property itself, of the taxes due thereon. Cobban v. Hinds, 23 M 338, 349, 59 P 1.

The provisions of this section and section 84-415, post, are mandatory, and, with the qualifications therein mentioned, require the assessor to assess personal property in the name of the real owner, if known; if not known, then to "unknown owners." A misnomer of the owner of personal property assessed as the property of a particular person vitiates the assessment, and renders a sale thereunder void. Birney v. Warren, 28 M 64, 67, 72 P 293. See also Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 525, 134 P 302.

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire ten-year period, did not affect the right of the latter, in view of this section, declaring that a mistake in the name of the owner does not render the assessment invalid, and section 84-442, to the effect that no assessment or collection of taxes is illegal on account of informality. Anderson v. Mace, 99 M 421, 430, 45 P 2d 771.

Property in Interstate Commerce Not Taxable

Personal property being transported in interstate commerce is beyond the reach of state taxation, even though its owner resides within the state seeking to make a levy thereon. Ford Motor Co. v. Linnane, 102 M 325, 336, 57 P 2d 803.

Situs of Property

In order for personal property to acquire a situs for the purpose of taxation, it must be within the state and subject to its jurisdiction at 12 o'clock noon on the first Monday of March. Ford Motor Co. v. Linnane, 102 M 325, 331, 57 P 2d 803.

The first Monday in March is significant to determine and fix the situs and ownership of property for tax purposes. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 907.

Tax Not Escapable by December 31st Trade-in

Contention that under this act tax is escapable by making a practice of trading in or selling motor vehicle on December 31st each year is fallacious since the dealer, or purchaser would have to pay the tax; in such case the burden of paying the tax is merely shifted. Wheir v. Dye, 105 M 347, 356, 73 P 2d 209.

Time of Assessment

The "assessing" of property is done after situs is acquired. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 907.

References

Montana Coal & Coke Co. v. Livingston, 21 M 59, 60, 52 P 780; Danforth v. Livingston, 23 M 558, 562, 59 P 916; Flowerree Cattle Co. v. Lewis and Clark Co., 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Small, 35 M 288, 293, 88 P 953; Westches-

ter Fire Ins. Co. v. Sullivan, 45 M 18, 19, 121 P 472; Hill v. County of Lewis and Clark, 54 M 479, 483, 171 P 929; Hayes v. Smith, 58 M 306, 312, 192 P 615; Averill Machinery Co. v. Freebury Bros., 59 M 594, 598, 198 P 130; State ex rel. Rankin v. Harrington, 68 M 1, 17, 217 P 681; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 22, 227 P 61; Northern Pacific Ry. Co., v. Musselshell County, 74 M 81, 87, 238 P 872; Montana Nat. Bank v. Yellowstone County, 78 M 62, 252 P 876; State v. Lewis and Clark County, 84 M 200, 202, 274 P 854; State ex rel. Blair v. Kuhr, 86 M 377, 283 P 758; Simpson v. Silver Bow County, 87 M 83, 93, 285 P 195; State ex rel. Schoonover v. Stewart, 89 M 257, 297 P 476; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; County of Musselshell v. Morris Development Co., 92 M 201, 210, 11 P 2d 774; Sutter v. Scudder, 110 M 390, 303, 103 P 2d 303.

Collateral References

Taxation⇨318.
84 C.J.S. Taxation § 382.

DECISIONS UNDER FORMER LAW

Constitutionality

Assertion that legislature, in amending this section by enacting chapter 72, Laws of 1937 (53-114 et seq.) and making special provision for taxing automobiles included in class 2 of section 84-301, among other property without first amending such section, unlawfully discriminated against motor vehicles, was not well made, since the legislature may properly go even to the extent of placing identical articles in the hands of different owners, different uses resulting in different productivity. Chapter 72, Laws of 1937 did not violate section 11, article XII and section 27, article III of the constitution. Wheir v. Dye, 105 M 347, 354, 73 P 2d 209.

Application to Cars Held in Stock by Dealer on Tax Day

Chapter 72, Laws of 1937, amending this section, cannot be construed that a dealer must pay taxes on all cars held in stock on January 1 before he can sell any of them, or that a purchaser of such car must pay all taxes assessed to the dealer and covering other cars before he may obtain license plates. He must pay the tax applicable to his own car, based on 33⅓ per cent of the valuation at which the car was assessed against the dealer. State ex rel. Sadler v. Evans, 106 M 286, 293, 77 P 2d 394.

Payment of Delinquent Taxes Not Prerequisite to Registration of Motor Vehicle

Under this section, as amended by section 9, chapter 72, Laws of 1937, the owner of a motor vehicle is not required to pay delinquent taxes previously assessed as a condition precedent to securing license plates, when such taxes are not a lien upon realty. State ex rel. Kleve v. Fischl, 106 M 282, 285, 77 P 2d 392.

84-407, 84-408. (2002.1, 2002.2) **Repealed—Chapter 159, Laws of 1947.**

84-409. (2003) **Statement—what to contain.** He must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession, or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession, or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession, or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional

sections of all tracts of land containing more than six hundred and forty acres which have been sectionized by the United States government; improvements, and personal property, including all vessels, steamers, and other watercraft, and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent.

Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included.

7. All depots, shops, stations, buildings, and other structures erected on the space covered by the right of way, and all other property owned by any person, corporation, or association of persons, owning or operating any railroad within the county.

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R. C. M. 1921. Cal. Pol. C. Sec. 3629.

Constitutionality

The purpose of subsection 6 of this section being merely to ascertain the just amount and value of property subject to taxation, in conformity with section 1, article XII of the constitution, does not have the effect of exempting from taxation property other than that enumerated in section 2 of said article, and it is therefore constitutional. Daly Bank & Trust Co. v. Board of County Commrs., 33 M 101, 107, 81 P 950.

Agent of a Company

It was the duty of a county assessor to require from the agent of a company to be assessed a verified list of its property in his county on the first Monday of March, which list, among other things, must have shown the particular property belonging to the company, and the county in which it was situated, or in which it was liable to taxation. Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 36, 81 P 398.

Application of Section

The provisions of this section are general and applicable alike to all taxpayers, whether natural persons or corporations. Daly Bank & Trust Co. v. Board of County Commrs., 33 M 101, 107, 81 P 950; Clark v. Maher, 34 M 391, 399, 87 P 272.

Deduction of Debts

This section authorizes any taxpayer to deduct or have deducted from his credits all debts then owing by him; but it does not authorize the deduction of debts from money on hand, and, if it attempted to do so, would clearly violate the provisions of the constitution. Clark v. Maher, 34 M 391, 399, 87 P 272.

Increase in Assessment

An increase in an assessment by the assessor in obedience to a void order of the board of equalization cannot be sustained under this section or section 84-442. Western Ranches v. Custer County, 28 M 278, 283, 72 P 659, distinguished in 28 M 286.

Property Not Subject to Assessment

Snowsheds constructed of reinforced concrete and steel, with timber roofs, the

walls of which on the mountainside of the track were imbedded in the ground four feet or more, the outer walls consisting of a series of piers grounded in holes from a foot to twelve feet deep, were part of defendant railway company's roadbed, and as such assessable, under section 16, article XII of the constitution, by the state board of equalization and not by the county assessor. Great Northern Ry. Co. v. Flathead County, 61 M 263, 267, 202 P 198.

References

Northern Pacific Ry. Co. v. Brogan, 52 M 461, 464, 158 P 820; State v. State Board of Equalization, 56 M 413, 438, 185 P 708; Hayes v. Smith, 58 M 306, 312, 192 P 615; State ex rel. Rankin v. Harrington, 68 M 1, 17, 217 P 681; State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 M 420, 424, 219 P 638; Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Bank of Miles City v. Custer County, 93 M 291, 19 P 2d 885; Ford Motor Co. v. Linnane, 102 M 325, 333, 57 P 2d 803.

Collateral References

Taxation⇨329, 331, 332.
84 C.J.S. Taxation §§ 396-399.

84-410. (2004) **County commissioners to furnish blanks, etc.** The board of county commissioners must furnish the assessor with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ..., do swear that I am a resident of the county of ..... (naming it), and that my post-office address is .....; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock m. on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county board of equalization, must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R. C. M. 1921. Cal. Pol. C. Sec. 3630.

References

Hayes v. Smith, 58 M 306, 312, 192 P 615; State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Ford Motor Co. v. Linnane, 102 M 325, 333, 57 P 2d 803; Lewis v. Bowman, 113 M 68, 72, 121 P 2d 162.

Collateral References

Taxation⇨331.
84 C.J.S. Taxation § 400.

84-411. (2005) **Statement to be filled out and returned to assessor.** The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The assessor must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by such assessor.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R. C. M. 1921. Cal. Pol. C. Sec. 3631.

Cross-References

False statement to assessor, penalty, sec. 94-1507.

Refusal to give lists to assessor, sec. 94-1506.

References

State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

84-412. (2006) **General powers of assessor.** Every assessor has power:

1. To require any person found within such assessor's county to make and subscribe an affidavit, giving his name and place of residence and post-office address.

2. To subpoena and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his county; and he may exercise this power in any county where the person whom he desires to examine may be found, but has no power to require such persons to appear before him in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the assessor, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the assessor in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the assessor must, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the assessor of the county in which such residence or property is therein shown to be. All moneys recovered by any assessor under the provisions of this section must by him be paid into the treasury of his county.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R. C. M. 1921. Cal. Pol. C. Sec. 3632.

Cross-References

Farm statistics collected by county assessor, sec. 84-449 et seq.

Hail insurance, duties, sec. 82-1501.

Lists of purebred stock, secs. 46-1201 to 46-1203.

Salary, sec. 25-605.

School district valuation, sec. 75-3724.

Discovery Proceedings

Where plaintiff had not refused to furnish a statement of his taxable property but had furnished an incorrect one, the assessor was without power to make the arbitrary assessment provided for in section 84-413, but the assessor should have proceeded to ascertain the facts under the powers granted him by this section, by citing plaintiff to appear before him and answer as to his property. Story v. Dixson, 64 M 206, 209, 208 P 592.

References

State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Bank of Miles City v. Custer County, 93 M 291, 303, 19 P 2d 885; State ex rel. Niewoehner v. Lutey, 126 M 152, 245 P 2d 1042.

Collateral References

Taxation⇐319 (1).

84 C.J.S. Taxation § 400.

84-413. (2007) **Method of making assessment upon refusal of statement.** If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply

with the other requirements of this title, the assessor must note the refusal on the assessment book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the assessor must not be reduced by the board of county commissioners.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R. C. M. 1921. Cal. Pol. C. Sec. 3633.

Application of Section

This section, providing that upon refusal or neglect of a taxpayer to furnish to the assessor a statement of his property subject to taxation, the assessor may make an arbitrary estimate which shall be final, being highly penal, its scope should not be extended to a case not clearly within its provisions. Story v. Dixson, 64 M 206, 209, 208 P 592.

Discovery Proceedings

Where plaintiff had not refused to furnish a statement of his taxable property but had furnished an incorrect one, the assessor was without power to make the arbitrary assessment provided for in this section but the assessor should have proceeded to ascertain the facts under the powers granted him by section 84-412, by citing plaintiff to appear before him and answer as to his property. Story v. Dixson, 64 M 206, 209, 208 P 592.

References

State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Bank of Miles City v. Custer County, 93 M 291, 303, 19 P 2d 885; Superior Coal Co. v. Musselshell County, 98 M 501, 41 P 2d 14.

Collateral References

Taxation⇐336 (2).
84 C.J.S. Taxation § 401.

84-414. (2008) **Assessment of unknown or absent owners.** If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property.

History: En. Sec. 19, p. 82, L. 1891; re-en. Sec. 3706, Pol. C. 1895; re-en. Sec. 2516, Rev. C. 1907; re-en. Sec. 2008, R. C. M. 1921. Cal. Pol. C. Sec. 3635.

References

Birney v. Warren, 28 M 64, 67, 72 P 293; State ex rel. Rankin v. Harrington, 68 M 1, 17, 28, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐337.
84 C.J.S. Taxation § 404.
51 Am. Jur. 641, Taxation, § 685.

84-415. (2009) **Assessment of unknown or absent owners—in whose name property to be assessed.** If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Sec. 20, p. 82, L. 1891; re-en. Sec. 3707, Pol. C. 1895; re-en. Sec. 2517, Rev. C. 1907; re-en. Sec. 2009, R. C. M. 1921. Cal. Pol. C. Sec. 3636.

Abandoned Property

The owner of personal property (a traction engine), which had been left standing on open ground near a town for more than a year, apparently not in the care or custody of anyone, and bearing the impress of abandoned property, was in no position to complain that it had been assessed to "unknown owners" and sold for delinquent taxes, where he had done nothing in the way of notifying the assessor that it was his property nor made an effort to pay or offer to pay the taxes. Averill Machinery Co. v. Freebury Bros., 59 M 594, 598, 198 P 130, cited as 2517, Revised Codes 1907.

References

Birney v. Warren, 28 M 64, 67, 72 P 293; Hill v. County of Lewis and Clark, 54 M 479, 483, 171 P 929; State ex rel. Rankin v. Harrington, 68 M 1, 17, 28, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Sutter v. Scudder, 110 M 390, 393, 103 P 2d 303; State v. North American Car Corp., 118 M 183, 164 P 2d 161, 163.

84-416. (2010) **Repealed—Chapter 34, Laws of 1951.**

Repeal

This section (Sec. 3708, Pol. C. 1895), relating to the assessment of property in another county, was repealed by Sec. 1, Ch. 34, Laws 1951.

84-417. (2011) **Consigned property.** All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

History: En. Sec. 21, p. 82, L. 1891; re-en. Sec. 3709, Pol. C. 1895; re-en. Sec. 2519, Rev. C. 1907; re-en. Sec. 2011, R. C. M. 1921. Cal. Pol. C. Sec. 3638.

References

State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐85.
84 C.J.S. Taxation § 102.

84-418. (2012) **Trustees, guardians, executors, etc.** When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

History: En. Sec. 22, p. 82, L. 1891; re-en. Sec. 3710, Pol. C. 1895; re-en. Sec. 2520, Rev. C. 1907; re-en. Sec. 2012, R. C. M. 1921. Cal. Pol. C. Sec. 3639.

References

State ex rel. Rankin v. Harrington, 68 M 1, 17, 28, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐414, 416.
84 C.J.S. Taxation § 457.

84-419. (2013) **Property of a firm or corporation—where assessed.** The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

History: En. Sec. 23, p. 82, L. 1891; re-en. Sec. 3711, Pol. C. 1895; re-en. Sec. 2521, Rev. C. 1907; re-en. Sec. 2013, R. C. M. 1921. Cal. Pol. C. Sec. 3641.

Cross-Reference

Production credit associations, assessment, sec. 84-5801.

Application of Section

The provisions of this section apply equally to all kinds of property. Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Small, 35 M 288, 293, 88 P 953.

Intangible Personal Property

Personal property, particularly that of an intangible character, such as credits represented by notes and mortgages, has its situs only at the domicile of the owner for purposes of taxation. Gallatin County v. Beattie, 3 M 173, 174; Holland v. Board of Commissioners, 15 M 460, 461, 462, 39 P 575; Monidah Trust v. Sheehan, 45 M 424, 431, 123 P 692.

References

State ex rel. Rankin v. Harrington, 68 M 1, 17 et seq., 217 P 681; Fergus Motor Co. v. Sorenson, 73 M 122, 136, 235 P 422.

Collateral References

Taxation⇐276, 418.
84 C.J.S. Taxation §§ 332, 461.
51 Am. Jur. 712, Taxation, § 793 et seq.

84-420. (2014) **Undistributed property of deceased persons.** The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

History: En. Sec. 24, p. 82, L. 1891; re-en. Sec. 3712, Pol. C. 1895; re-en. Sec. 2522, Rev. C. 1907; re-en. Sec. 2014, R. C. M. 1921. Cal. Pol. C. Sec. 3642.

Purpose of Section

An assessment to the "estate" of a deceased person is tantamount to an assessment to his heirs, guardians of his

heirs, executors of his will or administrators of his estate, as the case may be, if they have actual notice of it, since the purpose of this section is to assure that notice to some interested person shall be given and to provide that payment, when made, shall bind all parties in interest. Hill v. County of Lewis and Clark, 54 M 479, 483, 171 P 929.

References

Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐84.
84 C.J.S. Taxation § 101.
51 Am. Jur. 646, Taxation, §§ 693-695.

84-421. (2015) **Capital stock and franchises of corporations—where assessed.** The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.

History: En. Sec. 3713, Pol. C. 1895; re-en. Sec. 2523, Rev. C. 1907; re-en. Sec. 2015, R. C. M. 1921.

Shares of Stock

Shares of stock, if within the state, whether belonging to residents or nonresidents, are proper subjects for taxation. State ex rel. Rankin v. Harrington, 68 M 1, 17 et seq., 217 P 681.

Shares of stock in corporations are deemed intangible property taxable at the residence of their owner, except where there is such a combination of circumstances as produce what is referred to in the books as a business situs as distinguished from the domicile of their owner. State ex rel. Rankin v. Harrington, 68 M 1, 17 et seq., 217 P 681.

References

Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Bank of Miles City v. Custer County, 93 M 291, 302, 19 P 2d 885.

Collateral References

Taxation⇐276, 278.
84 C.J.S. Taxation §§ 330-334.
51 Am. Jur. 737, Taxation, § 822 et seq.

Inclusion of investments in stock of other corporations in fixing base for taxation of corporation, as double taxation. 11 ALR 2d 323.

84-422. (2016) **Personal property of merchant or manufacturer.** The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

History: En. Sec. 25, p. 83, L. 1891; re-en. Sec. 3714, Pol. C. 1895; re-en. Sec. 2524, Rev. C. 1907; re-en. Sec. 2016, R. C. M. 1921.

References

Flowerree Cattle Co. v Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Small, 35 M 288, 293, 88 P 953; State ex rel. Rankin v. Harrington, 68 M 1, 17 et seq., 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐263.
84 C.J.S. Taxation § 318.

84-423. (2017) **Property of express and stage companies, etc.** The personal property of express, transportation, and stage companies, steamboats, vessels, and other watercraft must be listed and assessed in the county, town, or district where such property is usually kept.

History: En. Sec. 26, p. 83 L. 1891; re-en. Sec. 3715, Pol. C. 1895; re-en. Sec. 2525, Rev. C. 1907; re-en. Sec. 2017, R. C. M. 1921.

Property of Express Company

All of the tangible property of an express company is liable to taxation. Wells Fargo & Co. v. Harrington, 54 M 235, 244, 169 P 463.

References

Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn

Cattle Co. v. Small, 35 M 288, 294, 88 P 953; State ex rel. Rankin v. Harrington, 68 M 1, 17 et seq., 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇨260, 262.
84 C.J.S. Taxation § 316 et seq.
51 Am. Jur. 787, Taxation, § 883.

84-424. (2018) **Gas and water companies.** The personal property and franchises of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located.

History: En. Sec. 27, p. 83, L. 1891; re-en. Sec. 3716, Pol. C. 1895; re-en. Sec. 2526, Rev. C. 1907; re-en. Sec. 2018, R. C. M. 1921.

Water Right

A water right owned by a water company was properly assessed in a school district where its place of business and principal works were located, and into the limits of which water was conveyed by pipelines for distribution to the inhabitants. Helena Water Works Co. v. Settles, 37 M 237, 240, 95 P 838.

References

Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Smith, 35 M 288, 294, 88 P 953; Wells Fargo & Co. v. Harrington, 54 M 235, 169 P 463; State ex rel. Rankin v. Harrington, 68 M 1, 21, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇨276.
84 C.J.S. Taxation § 347.
51 Am. Jur. 823, Taxation, § 935 et seq.

84-425. (2019) **Gas and water mains.** Gas and water mains and pipes laid in roads, streets, or alleys are personal property.

History: En. Sec. 28, p. 83, L. 1891; amd. Sec. 3717, Pol. C. 1895; re-en. Sec. 2527, Rev. C. 1907; re-en. Sec. 2019, R. C. M. 1921.

References

State ex rel. Rankin v. Harrington, 68 M 1, 21, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇨67.
84 C.J.S. Taxation § 76.

84-426. (2020) **Street railroads, bridges and ferries.** Street railroads and bridges, and ferries, and their franchises, owned by persons or corporations, must be listed and assessed in the county, town, or district where such property or any portion thereof is located, and the track of the railroad and the bridge are personal property.

History: En. Sec. 29, p. 83, L. 1891; re-en. Sec. 3718, Pol. C. 1895; re-en. Sec. 2528, Rev. C. 1907; re-en. Sec. 2020, R. C. M. 1921.

Street Railroads

The frequent use of the prefix "street" in statutes similar to this section and section 84-427 indicates the intention of the legislature to maintain the distinction between "railroads" and "street railroads," and suggests that in construing enactments touching railroads they should not be held to apply to street railroads unless the intention that they shall so apply is apparent. Helena Light & Ry. Co. v. City of Helena, 47 M 18, 34, 130 P 446.

Under this section, the constituent parts of a street railway track are personal property and taxable as such under sections 84-301 and 84-302 (prior to 1961 amendment), falling within class 7, at 40 per cent of its true and full value as property not included in the preceding six classes. Butte Electric Ry. Co. v. Brett, 80 M 12, 16, 257 P 478.

References

Northern Pacific Ry. Co. v. Brogan, 52 M 461, 469, 158 P 820; Wells Fargo & Co. v. Harrington, 54 M 235, 240, 169 P 463; State ex rel. Rankin v. Harrington, 68 M 1, 21, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇨260, 276, 284.
84 C.J.S. Taxation §§ 316, 332, 342.
51 Am. Jur., Taxation, p. 788, § 884; p. 790, § 887 et seq.

84-427. (2021) **Assessment of railroads, telegraph, telephone and electric light lines.** Railroads operated or situated in one county and not

assessed by the state board of equalization, telegraph, telephone, and electric light lines and similar properties situated in one county, and their franchises; canals, ditches, and flumes, situated in one county and the franchises of the same, must be listed and assessed in the county in which such property is located, and the assessor must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement containing a list of the number of miles such property is operated or situated in the county, and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R. C. M. 1921.

Telegraph Line Used by Railroad

So much of a telegraph line used exclusively for railroad purposes, extending along a right of way across the state, as is within any given county, is assessable by the assessor of that county, and not by the state board of equalization as part of the "roadway." Northern Pacific Ry. Co. v. Brogan, 52 M 461, 469, 158 P 820, distinguished in 55 M 162, 168, 174 P 704 and 56 M 413, 443, 185 P 708.

References

Helena Light & Ry. Co. v. City of Helena, 47 M 18, 34, 130 P 446; Wells Fargo & Co. v. Harrington, 54 M 235, 240, 169 P 463; State ex rel. Rankin v. Harrington, 68 M 1, 18, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐276, 284.
84 C.J.S. Taxation §§ 330-334, 339.
51 Am. Jur., Taxation, p. 790, § 887 et seq.; p. 803, § 906 et seq.

84-428. (2022) **Railroads — how assessed.** The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state must be assessed by the state board of equalization as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R. C. M. 1921. Cal. Pol. C. Sec. 3628.

Equipment of Cars

Cooking utensils forming a necessary and usual equipment of cars used for boarding railway construction crews are part of its rolling stock and as such subject to assessment for taxation by the state board of equalization only. Great Northern Ry. Co. v. Flathead County, 61 M 263, 267, 202 P 198.

Snowsheds Part of Roadbed

Snowsheds constructed of reinforced concrete and steel, with timber roofs, the walls of which on the mountainside of the track were embedded in the ground four feet or more, the outer walls consisting of a series of piers grounded in holes from a foot to twelve feet deep, were part of defendant railway company's roadbed, and as such assessable, under section 16, article XII of the constitution, by the state board of equalization and not by the county assessor. Great Northern Ry. Co. v. Flathead County, 61 M 263, 267, 202 P 198.

Telegraph Line

So much of a telegraph line used exclusively for railroad purposes, and extending along the right of way across the state, as is within any given county, is assessable by its assessor, and not by the state board of equalization as part of the "roadway." Northern Pacfic Ry. Co. v. Brogan, 52 M 461, 469, 158 P 820, distinguished in 55 M 162, 168, 174 P 704 and 56 M 413, 443, 185 P 708.

References

Northern Pacific Ry. Co. v. County of Musselshell, 54 M 96, 169 P 53; Wells Fargo & Co. v. Harrington, 54 M 235, 240, 169 P 463; State ex rel. Rankin v. Harrington, 68 M 1, 18, 217 P 681; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐317.
84 C.J.S. Taxation § 379.
51 Am. Jur. 790, Taxation, § 887 et seq.

What property is within provision in relation to local taxation of certain railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board. 80 ALR 252.

84-429. (2023) **Land—how assessed.** All other taxable property must be assessed in the county, city, or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The assessor must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. He must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, the value in another column on the same line, the value of improvements in another column, and the total in the total column; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the separate value of the same and the value of the improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R. C. M. 1921. Cal. Pol. C. Sec. 3628.

Cross-Reference

Improvements on state lands, how assessed, sec. 81-928.

References

Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Small, 35 M 288, 293, 88 P 953; Northern Pacific Ry. Co. v. Brogan, 52 M 461, 464, 158 P 820; State ex rel. Rankin v. Harrington, 68 M 1, 18, 217 P 681; State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 M 420, 423 et seq., 219 P 638; State ex rel. Schoonover v. Stewart, 89 M 257, 271, 297 P 476; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; State ex rel. Tillman v. District Court, 101 M 176, 182, 53 P 2d 107; Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 503.

Collateral References

Taxation⚭255, 260, 421 (1-9).
84 C.J.S. Taxation §§ 312, 323, 467.
51 Am. Jur. 652, Taxation, § 701 et seq.

84-429.1 to 84-429.6. Repealed—Chapter 191, Laws of 1957.

Repeal

These sections (Secs. 1 to 6, Ch. 198, L. 1955), relating to classification and appraisal of all taxable lands, were repealed by Sec. 8, Ch. 191, Laws 1957. For almost identical provisions see sections 84-429.7 to 84-429.13.

84-429.7. Classification and appraisal—duties of county commissioners. It is hereby made the duty of the board of county commissioners of the several counties of the state of Montana to accomplish, in such manner as the state board of equalization may direct, the following:

a. The classification of all taxable lands.

b. The appraisal of all taxable city and town lots.

c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state board of equalization. Such maps, plats, forms and books of record shall be official records of the county. A certified copy of all such records as may be desired shall be furnished to the state board of equalization, and the state board of equalization shall provide for the payment to the several counties of the cost of preparing such copy of the records so provided for, as they may require.

After compliance with the other provisions of this act, it shall be the duty of the board of county commissioners to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957.

Hearings on Value Classification

Where the state board of equalization, acting under this section through section 84-429.13 and pursuant to section 84-710, held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

Jurisdiction of District Court

District court had jurisdiction of action by taxpayers against state and county boards of equalization where the amended complaint sufficiently alleged that the appraisal leading to an assessment was being done contrary to this act. State ex rel. Fulton v. District Court, 140 M 166, 369 P 2d 416, 417.

Value Classification

Taxpayers were not entitled to an injunction under section 84-4505 against county assessor and county commissioners to prohibit use of valuations furnished by reclassification office in making up 1965 tax assessment roll, where there was no showing of irreparable injury and the law could furnish all relief to which complainants were entitled. State ex rel. Keast v. Krieg, — M —, 402 P 2d 405, 409.

DECISIONS UNDER FORMER LAW

Unconstitutional

This act (Ch. 198, Laws 1955, formerly sections 84-429.1 to 84-429.6), purports to tax for a public purpose, one class of property only and entirely excludes and exempts all other classes of property. It exempts all personal property from taxation and is therefore violative of section 2, article XII of the Montana constitution. Schladweiler v. State Board of Equalization, 131 M 13, 306 P 2d 673, reaffirming Stoner v. Timmons, 59 M 158, 196 P 519.

84-429.8. Classification and appraisal fund—tax levy for. The board of county commissioners shall create and establish a fund to be known as the "Classification and Appraisal Fund," and may, beginning with the fiscal year which commences July 1, 1965, levy annually a tax not to exceed one (1) mill upon all property in the county subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of such fund, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act and to maintain and keep current the classification of all taxable lands and appraisals of city and town lots and rural and urban improvements. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by said board; and the board of county commissioners is hereby authorized to

declare an emergency and issue such warrants in the manner provided by section 16-1907.

History: En. Sec. 2, Ch. 191, L. 1957; amd. Sec. 1, Ch. 23, L. 1965.

84-429.9. Assessments to be made on classification and appraisal. The county assessor must base the assessments of all lands, city and town lots, and all improvements on the classification and appraisal as made by the board of county commissioners.

History: En. Sec. 3, Ch. 191, L. 1957.

84-429.10. Initiation and completion of classification and appraisal. It is the intent of this act that classification and appraisal be initiated expeditiously, but in no event later than July 1, 1957 and shall be completed not later than five (5) years from the effective date of this act.

History: En. Sec. 4, Ch. 191, L. 1957.

Compiler's Note

The effective date of this act was March 9, 1957.

84-429.11. Notice of classification and appraisal to owners—appeals. It shall be the duty of the board of county commissioners to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the board of county commissioners shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the board of county commissioners shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the board of county commissioners. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the board of commissioners he shall have the right to appeal to the state board of equalization whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957.

84-429.12. Classification and appraisal—general and uniform methods. It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other

pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timberlands.

History: En. Sec. 6, Ch. 191, L. 1957.

84-429.13. Work done under prior law. Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements, under the provisions of chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of this act.

History: En. Sec. 7, Ch. 191, L. 1957.

Compiler's Note

Chapter 198, Laws 1955, referred to in this section, was repealed by Sec. 8, Ch. 191, Laws 1957.

84-430 to 84-437. (2024 to 2031) **Repealed—Chapter 198, Laws of 1955; Chapter 191, Laws of 1957.**

Repeal

These sections (Secs. 1 to 8, Ch. 239, L. 1921), relating to a uniform method of classification of property for tax purposes, were repealed by Sec. 7, Ch. 198, Laws 1955; Sec. 8, Ch. 191, Laws 1957.

84-438. (2032) **Property and money in litigation.** Money and property in litigation in possession of a county treasurer, or of a court or a clerk thereof, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes paid thereon under the direction of the court.

History: En. Sec. 32, p. 84, L. 1891; re-en. Sec. 3721, Pol. C. 1895; re-en. Sec. 2540, Rev. C. 1907; re-en. Sec. 2032, R. C. M. 1921. Cal. Pol. C. Sec. 3647.

References

Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇨87.
84 C.J.S. Taxation § 103.

84-439. (2033) **Property concealed, misrepresented, etc.** Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of county commissioners.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R. C. M. 1921. Cal. Pol. C. Sec. 3648.

References

Rosebud County v. Smith, 92 M 75, 9 P 2d 1071.

Collateral References

Taxation⇨353.
84 C.J.S. Taxation § 417.
51 Am. Jur. 676, Taxation, §§ 734-736.

84-440. (2034) **Property having escaped assessment.** Any property discovered by the assessor to have escaped assessment may be assessed at

any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3723, Pol. C. 1895; re-en. Sec. 2542, Rev. C. 1907; re-en. Sec. 2034, R. C. M. 1921. Cal. Pol. C. Sec. 3649.

Undistributed Estate of Decedent

Where, after the assessment roll had passed out of the assessor's hands and the county board of equalization had adjourned, that officer discovered, listed for assessment, and assessed under the authority of this section, personal property belonging to the undistributed estate of a deceased person, the fact that the executors in charge of it were thus deprived of a right to appeal to the board of equalization did not invalidate the additional assessment, since the property was taxable, and appeal to the board is available, not to him who has concealed property, but who has delivered to the assessor a sworn statement of all his taxable property. Hill v. County of Lewis and Clark, 54 M 479, 171 P 929.

References

Butte & Superior Min. Co. v. McIntyre, 71 M 254, 262, 229 P 730; Simpson v. Silver Bow County, 87 M 83, 93, 285 P 195; Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Ford Motor Co. v. Linnane, 102 M 325, 334, 57 P 2d 803.

Collateral References

Taxation⇐437.
84 C.J.S. Taxation § 417.

When statute of limitation commences to run against action to recover taxes on property withheld or omitted from tax list. 131 ALR 822.

84-441. (2035) **Supplemental assessment.** When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected by the assessor, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R. C. M. 1921.

Property Affected

This section applies to property which was not, but should have been, assessed as of the first Monday of March of the current year, not to property which was not in the state on that date. Ford Motor Co. v. Linnane, 102 M 325, 334, 57 P 2d 803.

References

Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

84-442. (2036) **Assessment not illegal for informality or delay.** No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

History: En. Sec. 4014, Pol. C. 1895; re-en. Sec. 2732, Rev. C. 1907; re-en. Sec. 2036, R. C. M. 1921. Cal. Pol. C. Sec. 3885.

Increase in Assessment

An increase in an assessment by the assessor in obedience to a void order of the board of equalization cannot be sustained under this section or section 84-409. Western Ranches v. Custer County, 28 M 278, 283, 72 P 659, distinguished in 28 M 286, 72 P 662.

Misnomer

The listing of land in the name of a person other than the owner is but an irregularity or informality which, of itself, does not avoid the assessment or render the tax illegal or unauthorized. Cobban v. Hinds, 23 M 338, 349, 59 P 1.

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire ten-year period, did not affect the right of the latter, in view of section 84-406, declaring that a mistake in the name of the owner does not render the assessment invalid, and this section, to the effect that no assessment or collection of taxes is illegal on account of informality. Anderson v. Mace, 99 M 421, 430, 45 P 2d 771.

Sale of Personal Property

Where no legal notice of tax sale of personal property was given, the sale was void. True, this section says: "No assessment or act relating to assessment or collection of taxes is illegal on account of informality." However, this departure from legal requirement is not an informality. It is a matter of substance and is vital. Perham v. Putnam, 82 M 349, 267 P 305.

References

Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; County of Musselshell v. Morris Development Co., 92 M 201, 210, 11 P 2d 774.

Collateral References

Taxation⇐318, 319 (2), 440.
84 C.J.S. Taxation §§ 382, 385, 390.

84-443. (2037) **Deputies for assessors.** The board of county commissioners may allow the assessor such a number of deputies to be appointed by him as will, in the judgment of the board, enable the assessor to complete the assessment within the time prescribed by law.

History: En. Sec. 4012, Pol. C. 1895; re-en. Sec. 2736, Rev. C. 1907; re-en. Sec. 2037, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1929.

References

Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐315.
84 C.J.S. Taxation § 373.

84-444. (2038) **Traveling expenses of assessor and deputies.** The assessor in each county in this state shall be paid the actual and necessary traveling expenses, not exceeding five hundred dollars ($500.00) in any one year, and his deputies shall be paid the actual and necessary traveling expenses not exceeding two hundred dollars ($200.00) each in any one year, incurred while in the performance of official duty, upon presenting and filing verified claims therefor, supported by vouchers for each item of expense to the board of county commissioners of their respective county.

History: En. Sec. 1, Ch. 44, L. 1909; re-en. Sec. 2038, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1925; amd. Sec. 1, Ch. 56, L. 1935; amd. Sec. 1, Ch. 14, L. 1943; amd. Sec. 1, Ch. 115, L. 1949.

References

Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071; Williams v. Sorenson, 106 M 122, 127, 75 P 2d 784.

Collateral References

Taxation⇐316.
84 C.J.S. Taxation § 384.

84-445. (2039) **Assessors liable for unassessed property.** The assessor and his sureties are liable on his official bond for all taxes on property within the county which, through his willful failure or neglect, is unassessed.

History: En. Sec. 40, p. 87, L. 1891; re-en. Sec. 3734, Pol. C. 1895; re-en. Sec. 2553, Rev. C. 1907; re-en. Sec. 2039, R. C. M. 1921. Cal. Pol. C. Sec. 3660.

Principal and Surety

Under the rule that a separate liability of the principal cannot be joined in an action on the bond against the surety, an action by a county against its assessor to recover from him money lost to it by reason of his willful failure and neglect to assess property, was improperly joined with an action against a surety company on the official bond of that officer. County of Silver Bow v. Kelly, 68 M 194, 197, 216 P 1106.

References

Rosebud County v. Smith, 92 M 75, 80, 9 P 2d 1071.

Collateral References

Taxation⇐324.
84 C.J.S. Taxation § 389.

84-446. (2040) **County attorney must prosecute.** The county attorney must, after the assessor completes the assessment book for the year, com-

mence an action on the assessor's bond for the amount of taxes lost from such willful failure or neglect.

History: En. Sec. 41, p. 87, L. 1891; re-en. Sec. 3735, Pol. C. 1895; re-en. Sec. 2554, Rev. C. 1907; re-en. Sec. 2040, R. C. M. 1921. Cal. Pol. C. Sec. 3661.

84-447. (2041) **Judgment—when entered against assessor.** On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

History: En. Sec. 42, p. 87, L. 1891; re-en. Sec. 3736, Pol. C. 1895; re-en. Sec. 2555, Rev. C. 1907; re-en. Sec. 2041, R. C. M. 1921. Cal. Pol. C. Sec. 3662.

84-448. (2042) **Annual settlements.** Every assessor, county attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R. C. M. 1921.

Collateral References

Counties⇐94 (4); District and Prosecuting Attorneys⇐7 (1); Taxation⇐319 (1).

20 C.J.S. Counties §§ 150, 152; 27 C.J.S. District and Prosecuting Attorneys § 12; 84 C.J.S. Taxation § 376.

84-449. (2043) **County assessor to collect farm statistics.** It shall be the duty of each county assessor and his deputies, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator or renter as shall be called for by the commissioner of agriculture and on blanks to be prepared and furnished by the commissioner of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R. C. M. 1921.

Collateral References

Taxation⇐319 (1).

84 C.J.S. Taxation § 376.

84-450. (2044) **Delivery to commissioner of agriculture.** The original blanks upon which the statistics are gathered by the county assessor and his deputies shall be returned by them to the commissioner of agriculture immediately on completion of his assessment work and not later than July first each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R. C. M. 1921.

84-451. (2045) **Statistics, how obtained.** If for any reason the county assessor or his deputy is unable to obtain the statistics from any farm owner, operator or renter, he shall obtain them from the most reliable source, so that the returns may be complete.

History En. Sec. 3, Ch. 187, L. 1921; re-en. Sec. 2045, R. C. M. 1921.

84-452. (2046) **Penalty for refusal to furnish statistics.** Any farm owner, operator, or renter refusing to furnish the information called for in section 84-449, or willfully furnishes fraudulent information to any county

assessor or his deputy, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars, nor more than one hundred dollars, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; re-en. Sec. 2046, R. C. M. 1921.

Collateral References
Taxation⇐325.
84 C.J.S. Taxation § 388.

84-453. (2047) **Penalty for neglect of act by officer.** Any county assessor or deputy county assessor who shall willfully neglect or refuse in whole or in part to perform the duties required in this act, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum of not less than twenty dollars, nor more than two hundred dollars, and the cost of prosecution.

History: En. Sec. 5, Ch. 187, L. 1921; re-en. Sec. 2047, R. C. M. 1921.

CHAPTER 5

ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL

Section 84-501. Property—how listed.
84-502. Form of assessment book.
84-503. Assessment book, when to be completed—affidavit.
84-504. Map book.
84-505. Assessment and map book delivered to and kept by clerk.
84-506. Statement by assessor to state board of equalization.
84-507. Penalty for failure of assessor to complete assessment book and transmit statement.
84-508. Persons claiming ownership of land desiring to be assessed.
84-509. Commissioners to furnish assessor maps.
84-510. List of lands sold by state to be transmitted by state land agent.
84-511. Defects in form of assessment book may be supplied.
84-512. Omissions in delinquent lists—how corrected.
84-513. Publication of such lists.
84-514. Abbreviations.
84-515. Fines and forfeitures to be paid to county treasurer.

84-501. (2048) **Property—how listed.** The assessor must prepare an assessment book with appropriate headings, alphabetically arranged, unless otherwise directed by the state board of equalization, in which must be listed all property within the county, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation must, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, must be assessed against the exempt land, nor under any circumstances must the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax.

16. Such other things as the state board of equalization may require.

History: En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R. C. M. 1921. Cal. Pol. C. Sec. 3650.

Appropriate Headings

An assessor must list all property in his county in an assessment book under appropriate headings. State ex rel. Fadness v. Eie, 53 M 138, 146, 162 P 164.

References

Hilburn v. St. Paul, M. & M. Ry. Co., 23 M 229, 242, 58 P 551; Danforth v. Livingston, 23 M 558, 562, 59 P 916; Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 381, 283 P 758; Habel v. High School District "C" of Cascade County, 129 M 588, 292 P 2d 349, 351; Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 914.

Collateral References

Taxation⇐408 et seq.
84 C.J.S. Taxation § 454.
51 Am. Jur. 633, Taxation, § 673 et seq.

84-502. (2049) **Form of assessment book.** The form of the assessment book must be as directed by the state board of equalization, and in those counties for which said board does not prescribe a different form it must be substantially as follows:

Assessment book of the property of ..... county, for the year 19....., assessed to the owner, when known, and if not known, to unknown owner.

Remarks	
Poll-Tax	
Total Tax	
Total value of all property after equalization by the state board of equalization	
Total value of all property for taxation	
Deductions on account of debts due	
Total value of all property	
Amount of money	
Value of personal property	
Value of improvements on real estate assessed to persons other than the owners of the real estate. Value of improvements thereon	
Value of city and town lots	
Value of improvements thereon	
Value of real estate other than city and town lots	
Number of mines, value of same and net proceeds	
School, road, or other district in which located	
Number of Acres	
Description of Property — City or town lots. — Block	Personal property. (Here items may be enumerated.)
Description of Property — City or town lots. — Lot	
Description of Property — Real estate other than city and town lots. — Fraction	
Description of Property — Real estate other than city and town lots. — Range E. or W.	
Description of Property — Real estate other than city and town lots. — Township N. or S.	
Description of Property — Real estate other than city and town lots. — Section	
Description of Property — Real estate other than city and town lots. — Subdivision of section	
Residence	
Taxpayers' names	
When tax paid	

History: En. Sec. 3725, Pol. C. 1895; re-en. Sec. 2544, Rev. C. 1907; re-en. Sec. 2049, R. C. M. 1921.

Location of Property

The assessment book must be so kept that it will appear therefrom what property is within the limits of cities or towns, and what is elsewhere. State ex rel. City of Butte v. Weston, 29 M 125, 129, 74 P 415.

Collateral References

Taxation⇨412.
84 C.J.S. Taxation § 456.

84-503. (2050) **Assessment book, when to be completed—affidavit.** On or before the second Monday in July, in each year, the assessor must complete his assessment book. He must take and subscribe an affidavit, in the assessment book, to be substantially as follows: "I, ..., assessor of ..... county, do swear that between the first Monday in March and the

second Monday in July, nineteen hundred and ....., I have made diligent inquiry and examination to ascertain all the property within the county, subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill will or otherwise; nor allowed anyone to escape a just and equal assessment through favor, or reward, or otherwise." But the failure to take or subscribe such an affidavit, or any affidavit, will not in any manner affect the validity of the assessment.

History: Ap. p. Sec. 1697, 5th Div. Comp. Stat. 1887; amd. Sec. 19, p. 91, Ex. L. 1887; en. Sec. 36, p. 86, L. 1891; re-en. Sec. 3726, Pol. C. 1895; re-en. Sec. 2545, Rev. C. 1907; re-en. Sec. 2050, R. C. M. 1921. Cal. Pol. C. Sec. 3652.

Completion of Assessment Book

An assessor is required to have his assessment book completed on or before the second Monday of July. State ex rel. Fadness v. Eie, 53 M 138, 146, 147, 162 P 164.

References

State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415; State ex rel. Federal Land Bank v. Hays, 86 M 58, 282 P 32; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 767.

Collateral References

Taxation⇨433.
84 C.J.S. Taxation § 472.

84-504. (2051) **Map book.** The assessor must, when directed so to do by the board of commissioners, in a map book make a plat of the various blocks within any incorporated city or town, and mark thereon, in each subdivision, the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R. C. M. 1921.

Collateral References

Taxation⇨410.
84 C.J.S. Taxation § 455.

84-505. (2052) **Assessment and map book delivered to and kept by clerk.** As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof, and of the time the board of commissioners will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R. C. M. 1921. Cal. Pol. C. Sec. 3654.

Notice by County Clerk

An assessor's assessment book, when completed, must be delivered to the county clerk, who must give notice of the fact by publication, and also that the board of commissioners will meet to equalize assessments. State ex rel. Fadness v. Eie, 53 M 138, 146, 162 P 164.

References

State ex. rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 767.

Collateral References

Taxation⇨435.
84 C.J.S. Taxation § 478.

84-506. (2053) **Statement by assessor to state board of equalization.** On the second Monday in July in each year, the assessor of each county must transmit to the state board of equalization a statement, showing:

1. The several kinds of personal property.
2. The average and total value of each kind.
3. The number of livestock, number of bushels of grain, number of pounds, or tons, of any article sold by the pound or ton.
4. When practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

History: En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R. C. M. 1921. Cal. Pol. C. Sec. 3655.

Collateral References
Taxation⇐319 (1).
84 C.J.S. Taxation § 376.

84-507. (2054) **Penalty for failure of assessor to complete assessment book and transmit statement.** Every assessor who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state board of equalization, forfeits the sum of one thousand dollars to be recovered on his official bond, for the use of the county, or to be deducted from his salary by the board of county commissioners.

History: En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R. C. M. 1921. Cal. Pol. C. Sec. 3656.

Collateral References
Taxation⇐324.
84 C.J.S. Taxation § 389.

84-508. (2055) **Persons claiming ownership of land desiring to be assessed.** Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefore, may have his name inserted with that of the person to whom such land is assessed.

History: En. Sec. 3731, Pol. C. 1895; re-en. Sec. 2550, Rev. C. 1907; re-en. Sec. 2055, R. C. M. 1921. Cal. Pol. C. Sec. 3657.

Request to Have Name Added in Assessment Book

Where property is assessed in the name of a certain person and another, claiming it, desires to be assessed therefor, he may, under this section, have his name inserted in the assessment book with that of the former, and his request in that behalf should be sent to the county assessor and not to the county treasurer. Sutter v. Scudder, 110 M 390, 395, 103 P 2d 303.

Reservation of Mining Rights

Where lands were sold with reservations in the grantor of minerals, mining rights, etc., the grantor was entitled as of right under this section to have its name inserted upon the assessment roll with each of its grantees, and to have the reservation in every instance assessed to it and not to its grantee upon proper request. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 426, 158 P 682.

Collateral References
Taxation⇐438.
84 C.J.S. Taxation § 507.

84-509. (2056) **Commissioners to furnish assessor maps.** The board of county commissioners must provide maps for the use of the assessor, showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the county general fund.

History: En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R. C. M. 1921. Cal. Pol. C. Sec. 3658.

84-510. (2057) **List of lands sold by state to be transmitted by state land agent.** On or before the first Monday in March in each year, the

state land agent must make out and transmit to the assessor of each county where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

History: En. Sec. 3733, Pol. C. 1895; re-en. Sec. 2552, Rev. C. 1907; re-en. Sec. 2057, R. C. M. 1921. Cal. Pol. C. Sec. 3659.

Purpose of Section

This section was enacted for the sole purpose of advising the several county assessors with respect to such lands as may have been sold by the state for which either certificates of purchase or patents have issued, to the end that such lands might be listed to the vendees and assessed. Courtney v. Missoula County, 21 M 591, 594, 55 P 359.

References

Hayes v. Smith, 58 M 306, 312, 192 P 615; Ford Motor Co. v. Linnane, 102 M 325, 333, 57 P 2d 803.

Collateral References

Taxation⇨213.
84 C.J.S. Taxation § 251.

84-511. (2058) **Defects in form of assessment book may be supplied.** Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes, and after the original assessment was made.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R. C. M. 1921. Cal. Pol. C. Sec. 3881.

84-512. (2059) **Omissions in delinquent lists—how corrected.** When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

History: En. Sec. 194, p. 127, L. 1891; re-en. Sec. 4011, Pol. C. 1895; re-en. Sec. 2729, Rev. C. 1907; re-en. Sec. 2059, R. C. M. 1921. Cal. Pol. C. Sec. 3882.

Collateral References

Taxation⇨630.
85 C.J.S. Taxation § 768.

84-513. (2060) **Publication of such lists.** The publication must be made in the same manner as the original publication, and for not less than one week.

History: En. Sec. 195, p. 127, L. 1891; re-en. Sec. 4012, Pol. C. 1895; re-en. Sec. 2730, Rev. C. 1907; re-en. Sec. 2060, R. C. M. 1921. Cal. Pol. C. Sec. 3883.

84-514. (2061) **Abbreviations.** In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations, and figures may be used to designate the township, range, section, or parts of section.

History: En. Sec. 196, p. 127, L. 1891; re-en. Sec. 4013, Pol. C. 1895; re-en. Sec. 2731, Rev. C. 1907; re-en. Sec. 2061, R. C. M. 1921. Cal. Pol. C. Sec. 3884.

Collateral References

Taxation⇨421 (9), 658 (4).
84 C.J.S. Taxation § 467; 85 C.J.S. Taxation § 794.

84-515. (2062) **Fines and forfeitures to be paid to county treasurer.** The fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907; re-en. Sec. 2062, R. C. M. 1921.

NOTE.—The word "title" in this section referred to the entire taxation laws from sections 2498 to 2780, Revised Codes, 1907.

CHAPTER 6

EQUALIZATION OF TAXES BY COUNTY BOARDS OF EQUALIZATION

Section 84-601. County commissioners—when to equalize assessment.
84-602. Equalization of assessments.
84-603. Application for reduction in valuations.
84-604. Examination of applicant.
84-605. Change of valuation of class of property—hearing necessary.
84-606. Witnesses may be subpoenaed.
84-607. Assessor to be present—statement of property not assessed.
84-608. County commissioners to use records in equalizing.
84-609. Board may direct assessor to assess in certain instances.
84-610. County clerk must keep record of proceedings and make oath.

84-601. (2113) **County commissioners—when to equalize assessment.** The board of county commissioners is the county board of equalization, and must meet on the third Monday of July in each year to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the second Monday in August.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R. C. M. 1921. Cal. Pol. C. Sec. 3672.

Appeal to the Courts

Under the law as it stood in 1898, it was held that since there was no statute providing for an appeal from the action of the county assessor and board of county commissioners, sitting as a board of equalization, under sections 3700 et seq. and sections 3780-3785, of the Political Code of 1895, courts would not interfere with the action of such officers where the assessor acted fairly and honestly and the board gave the plaintiff a fair hearing. Danforth v. Livingston, 23 M 558, 562, 563, 59 P 916.

In the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer may not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the county and state boards of equalization being exclusive in the absence of the contingencies referred to. Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659.

Decision of State Board of Equalization

Boards of county commissioners have no power, authority or jurisdiction under the constitution nor statutes to reduce, compromise, remit, release, cancel, diminish or extinguish any state tax obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined and fixed by the state board of equalization. Carlson v. Flathead County, 130 M 36, 293 P 2d 279, 283. (Dissenting opinion, 130 M 36, 293 P 2d 279, 286.)

Employment of Tax Experts

Since under the law it is the duty of the board of county commissioners as the ex officio county board of equalization to adjust and equalize the assessments made by the assessor, i. e., to increase or lower them, it has the implied power to contract with experts to furnish it information relative to reclassification, reappraisal and revaluing the real property, with the improvements thereon in a city to enable it intelligently to perform its duties as such board of equalization. (This holding not to be understood as declaring that the board of equalization may enter into such a contract as would deprive the assessor of his duty imposed by law, or to relieve him of his official obligation.) State ex rel. Blair v. Kuhr, 86 M 377, 381, 283 P 758.

While the board of county commissioners is without power to enter into a contract for services the performance of which is cast upon another county official or board, it may contract with a private

individual for information relative to matters of taxation to aid it in the performance of its duties as a county board of equalization, even though, incidentally, the information received may aid other officials in the performance of their duties, provided the grant of power is to be found in the statutes. Simpson v. Silver Bow County, 87 M 83, 93, 285 P 195.

Term

While boards of equalization are provided for in the constitution, their periods of life are prescribed by the legislature, and they cannot hold for any other or longer period than the legislature has fixed. So, when a county board adjourned on the second Monday of August, as provided in this section, its term of existence for that year absolutely expired. Matador Land & Cattle Co. v. Custer County, 28 M 286, 287, 72 P 662.

Where the board of county commissioners, at a meeting held in October, passed a resolution which reduced the assessed valuation of a taxpayer, and thereby reduced, remitted, compromised and canceled and extinguished the assessed tax, such resolution was void, not only because they did not have the power so to do, but also because their life as a county board of equalization for the year had expired. Carlson v. Flathead County, 130 M 36, 293 P 2d 279, 284. (Dissenting opinion, 130 M 36, 293 P 2d 279, 286.)

References

State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 12, 268 P 555; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 766.

Collateral References

Taxation⇐449 (1).
84 C.J.S. Taxation § 490.

DECISIONS UNDER FORMER LAW

Responsibilities

Under former statutes the board of county commissioners, sitting as a board of equalization, was responsible for the correctness of the assessment book of the county. State ex rel. Shapley v. Board of Commrs. of Yellowstone County, 12 M 503, 509, 31 P 78.

84-602. (2114) **Equalization of assessments.** The board has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the board shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known place of residence. The board also has power, in the event that any class of property is assessed as a class, at more or less than its actual value, by the county assessor and the valuation of such property within the county demands a general reclassification by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of county commissioners.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933; amd. Sec. 1, Ch. 196, L. 1957.

Increased Valuations

State board of equalization, which issued a directive to board of county commissioners and county assessor in November, 1963 requiring use of certain valuations on grades of farm land for 1964 and years thereafter, which the officials of the county refused to do, was entitled to manda-

mus to compel the county officials to comply with directive. Alleged impossibility of compliance on July 22, 1964, was no defense. The officials had from November to the second Monday in August to accomplish the task but chose to do nothing except contest the matter. State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 769.

Powers of Board of County Commissioners

The powers and duties of the board of county commissioners, sitting as a board of equalization, in relation to individual assessments and the changes it may make in them, are defined in sections 2573 to 2581 of the Revised Codes (84-602 to 84-610). State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164. See also State ex rel. Beall v. Ellis, 15 M 224, 227, 38 P 1079, as to the power of the county board of equalization to increase or lower assessments.

References

Montana Ore Purchasing Co. v. Maher, 32 M 480, 486, 81 P 13; Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 186 P 332; Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659; Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 12, 268 P 555; State ex rel. Blair v. Kuhr, 86 M 377, 381, 283 P 758.

Collateral References

Taxation⇐449 (1).
84 C.J.S. Taxation § 490.
51 Am. Jur. 681, Taxation, §§ 741-792.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.

84-603. (2115) **Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board on or before the 1st day of August, a written application therefor, verified by his oath. Said application shall state the post-office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The board of county commissioners shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3674.

Availability of Statutory Remedies

Where taxes upon lands were valid but were complained of as excessive, the question of their excessiveness must have been first presented to the county board of equalization, under this section before resort could be had to the statutory remedies. Thwing v. Weiser, 65 M 28, 210 P 750.

In the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer may not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the county and state boards of equalization being exclusive in the absence of the contingencies referred to. Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659.

Condition Precedent

As a condition precedent to the reduction of the valuation of property, the party affected thereby, or claiming a reduction, or his agent, must file a written application therefor with the board of equalization, verified by his oath, showing the facts upon which such reduction is claimed. Before a plaintiff in an action to recover taxes paid to the county treasurer, claimed to be unlawfully assessed, could be entitled to relief, his complaint should show a compliance with this essential condition. Barrett v. Shannon, 19 M 397, 399, 400, 48 P 746.

Exclusive Remedy

Relief from excessive tax must be by written application to the county board of equalization. Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 12, 268 P 555.

Powers of Board of County Commissioners

The powers and duties of the board of county commissioners, sitting as a board of equalization, in relation to individual assessments and the changes it may make in them, are defined in sections 2573 to 2581 of the Revised Codes (84-602 to 84-610). State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

Refusal of County and State Boards To Act

In an action in the district court for a writ of mandamus by a taxpayer to compel the state board of equalization to reduce the valuation of unimproved lots in the outskirts of a city from $51,325 to $5,420, where the evidence showed the value thereof not to exceed about $5,400, the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant board to reduce the valuation to a figure consistent with the proof of the actual cash value. Corcoran v. State Board of Equalization, 116 M 499, 502, 154 P 2d 795.

References

State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758; Treasure State Pipe Line Co. v. County of Toole, 136 M 108, 345 P 2d 162, 163.

Collateral References

Taxation⇨449 (4).
84 C.J.S. Taxation § 492.

84-604. (2116) **Examination of applicant.** Before the board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry; except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of a certain class of property in the county. The testimony of all witnesses upon such hearing must be reduced to writing and preserved, and transcribed if taken in shorthand or stenotype. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933; amd. Sec. 3, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3675.

References

State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

84-605. (2116.1) **Change of valuation of class of property—hearing necessary.** The state board of equalization shall not be authorized to raise the value of any class of property in any county until after a public hearing in said county and on evidence received at said hearing and shall have no authority to raise the value of any class of property higher than the actual value established by testimony adduced at such hearing.

History: En. Sec. 4, Ch. 187, L. 1933.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Proceedings

Where the state board of equalization held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

Writ of Prohibition

Action of district court in issuing writ of prohibition against state board of equalization was premature where it prohibited the board from proceeding further

under this section and prevented the board from discharging its constitutional duties.

State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

84-606. (2117) **Witnesses may be subpoenaed.** Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R. C. M. 1921. Cal. Pol. C. Sec. 3676.

References

State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

84-607. (2118) **Assessor to be present—statement of property not assessed.** During the session of the board the assessor and any deputy whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the board, and shall, when requested by the board or any party to the proceeding, furnish to the board a written statement showing the basis for his valuation of the property under consideration at the hearing; and shall, when requested by the board or any party to the proceeding, furnish to the board a written statement showing the basis for his valuation of any comparable property in the vicinity of the property under consideration at the hearing. At said meeting of the board of equalization the county assessor shall present to said board a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or otherwise, has been assessed for less than its correct value; thereupon it shall be the duty of said board immediately and while sitting as a board of equalization, to investigate said statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, said board shall correct such assessment in the manner provided for the correction of assessments by the board of equalization.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1951. Cal. Pol. C. Sec. 3677.

References

State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

84-608. (2119) **County commissioners to use records in equalizing.** The board of county commissioners must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of the county, and may require the assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the assessor before the delivery of the assessment book to the county clerk.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R. C. M. 1921. Cal. Pol. C. Sec. 3679.

References

Cosier v. McMillan, 22 M 484, 56 P 965; State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

84-609. (2120) **Board may direct assessor to assess in certain instances.** During the session of the board of county commissioners it may direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property, when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the clerk must notify all persons interested, by letter deposited in the post office, postpaid, and addressed to the person interested, at least ten days before the action is taken, of the day fixed when the matter will be investigated.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2581, Rev. C. 1907; re-en. Sec. 2120, R. C. M. 1921. Cal. Pol. C. Sec. 3681.

Relief from Illegal Taxes

The right of the owner of property to obtain relief from illegal taxes by injunction is not in anywise affected by his failure, after notice from the board, to make timely objection. Barnard Realty Co. v. City of Butte, 50 M 159, 167, 145 P 946.

Ten-day Notice

The notice of ten days, required by this section to be given a taxpayer, is jurisdictional. Western Ranches v. County of Custer, 28 M 278, 281, 72 P 659, distinguished in 28 M 286; Montana Ore Purchasing Co. v. Maher, 32 M 480, 487, 81 P 13. See also Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 533, 186 P 332; Western Ranches v. Custer County, 89 Fed 577.

Failure by the county board of equalization to give a taxpayer the ten days' notice of an increase in his assessment, is not waived by his voluntary appearance before the board, after the raise had been made, for the purpose of seeking a reduction of the assessment. Western Ranches v. County of Custer, 28 M 278, 281, 72 P 659, distinguished in 28 M 286, 72 P 662; Montana Ore Purchasing Co. v. Maher, 32 M 480, 488, 81 P 13. See Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 533, 186 P 332.

Void Notice

Where a county board of equalization gave notice to a taxpayer on August 8, 1896, to appear on September 8th, following, the notice mailed on the former date was void, the functions of the board as a board of equalization having expired as prescribed in section 84-601 on the second Monday of August, which was the tenth of the month. Matador Land & Cattle Co. v. Custer County, 28 M 286, 287, 72 P 662.

Waiver of Irregular Assessment

Where the board, instead of requiring the assessor to do so, itself placed a valuation upon the stock in trade of an Indian post trader licensed to do business upon a reservation, the property in question being subject to state and county taxation so long as the Indians were not interested therein, the irregularity in making the assessment was waived by the appearance of the taxpayer before the board to request it to strike the same, without objecting either to the irregularity or to the valuation adopted. Cosier v. McMillan, 22 M 484, 490, 491, 56 P 965.

References

Dolenty v. Broadwater County, 45 M 261, 263, 122 P 919; State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659.

Collateral References

Taxation⇨360, 362.
84 C.J.S. Taxation §§ 417, 506.

84-610. (2121) **County clerk must keep record of proceedings and make oath.** The county clerk must record, in a book to be kept for that purpose, all changes, corrections, and orders made by the board, and during its session, or as soon as possible after its adjournment, must enter upon the

assessment book all changes and corrections made by the board, and on or before the first Monday of August must affix his affidavit thereto, subscribed by him as follows: "I, ..., do swear that, as county clerk of ..... county, I have kept correct minutes of all the acts of the board of county commissioners touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized."

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2582, Rev. C. 1907; re-en. Sec. 2121, R. C. M. 1921. Cal. Pol. C. Sec. 3682.

Changes in Assessments

Changes wrought in assessments by the board of county commissioners, sitting as a board of equalization, must be noted by the clerk and entered on the book in the proper places. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

Belknap Realty Co. v. Simineo, 67 M 359, 361, 215 P 659; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 767.

CHAPTER 7

EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

Section 84-701. State board of equalization—appointment of members—term of office.
84-702. Qualification and compensation.
84-703. Organization, quorum, sessions.
84-704. Definitions.
84-705. Employees—expenses—engineer assistance—minutes—rules.
84-706. Office, furnishings and supplies.
84-707. Continuity of action of former board.
84-708. Powers and duties.
84-709. Appeal to state board of equalization—hearing.
84-710. Notice of intention to change assessment.
84-711. Assessment of omitted property—limitation.
84-712. Statement of changes to be sent to county clerk.
84-713. Determination of state rate of taxation—notice of.
84-714. Penalty for refusal to furnish information.
84-715. Duties of public officers.
84-716. Hearings, witnesses, contempt, fees and subpoenas.
84-717. Seal.
84-718. Unconstitutionality or invalidity.
84-719. Assessment and apportionment by board—when made.
84-720. Transmission of assessment and apportionment to county clerk.
84-721. Entering of state board's assessment in assessment book.
84-722. Change of assessment—application—hearing—reassessment.
84-723. Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes imposed on state board of equalization.
84-724. Destruction of tax records authorized—procedure.
84-725. Suspense account for receipts and refunds.
84-726. Refund of overpayments—time of filing claims for refund—procedure.
84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration.
84-728. Valuation of interstate fleets—determination of aggregate tax due.
84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration.
84-730. Situs in state of proportionally registered fleets—collection of property tax.
84-731. Deposit and distribution of taxes on proportionally registered fleets.
84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee.
84-733. Corporation license tax clearance certificates furnished—fee.

84-734. Fees to reimburse board for costs—deposit in general fund.
84-735. Returns to which act applies.

84-701. (2122.1) **State board of equalization—appointment of members—term of office.** The state board of equalization, created by article XII of the constitution as amended shall be composed of three members to be appointed by the governor by and with the advice and consent of the senate. The members of said board shall be appointed within ten days after the passage of this act, and before the adjournment of the present legislative assembly. The governor shall designate the term of service of each member first appointed, so that the term of one shall end March 1st, 1925, of another March 1st, 1927, and of the third March 1st, 1929. Each succeeding member shall hold his office for a term of six years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by appointment in accordance with the provisions of the constitution. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the last day of January during the biennial session of the legislative assembly, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923.

References

Tax Commission Case, 68 M 450, 462, 219 P 817; State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

Collateral References

Taxation⇐446½.
84 C.J.S. Taxation § 497.
51 Am. Jur. 681, Taxation, §§ 741-792.

84-702. (2122.2) **Qualification and compensation.** The persons to be appointed as members of the board of equalization shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office. Each member shall receive an annual salary of not more than ten thousand dollars ($10,000) payable in equal monthly installments. The member elected chairman as provided for in 84-703 shall receive additional compensation of not more than five hundred dollars ($500) per annum payable in the same manner as the salary. He shall also be paid his actual traveling and other expenses when away from the capitol on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963.

84-703. (2122.3) **Organization, quorum, sessions.** The members of said board of equalization first appointed, shall without delay, meet at the state capital and shall organize and elect one of their members as chairman.

A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Sundays and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capitol when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, Ch. 3, L. 1923.

84-704. (2122.4) **Definitions.** (1) The term "state board" or "board" when used in this act without other qualification, shall mean the state board of equalization.

(2) The term "person," when used in this act, shall mean and include any individual, firm, partnership, association or corporation unless otherwise expressly stated.

(3) The phrase "municipal corporation" or "municipality" or "taxing unit" when used in this act shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

History: En. Sec. 4, Ch. 3, L. 1923.

84-705. (2122.5) **Employees—expenses—engineer assistance—minutes—rules.** Subject to the provisions of sections 59-901 and 59-902, the state board of equalization may appoint a secretary and employ such other persons as experts, assistants, clerks and stenographers, as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate, during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. Said board may also require the assistance of any engineer in the service of any department of the state government without additional compensation other than such as he is already receiving. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a board of equalization or otherwise and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; amd. Sec. 1, Ch. 82, L. 1947.

84-706. (2122.6) **Office, furnishings and supplies.** The board shall keep its office at the capitol, and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923.

References

State v. Rother, 130 M 357, 303 P 2d 393 at 397 (dissenting opinion).

84-707. (2122.7) **Continuity of action of former board.** All records, books, documents, reports, and correspondence, received and kept by the

former state board of equalization, and all other property in its possession, shall immediately, upon the organization of the new board, be transferred to it for its use and convenience. The board shall have and possess all the powers and authority and be subject to all the duties heretofore possessed by and imposed upon the former state board of equalization. The board shall continue and complete any and all work undertaken or commenced and not completed by its predecessor. All acts of the former state board of equalization initiated and completed in whole or in part since the adoption of the constitutional amendment creating the new board are hereby ratified and confirmed in such manner as to preserve the continuity of all action taken by the state board of equalization regarding taxation or any other duties imposed upon it relating to public revenue. The salaries and traveling expenses of assistants and clerks, formerly employed by the old board, for services performed from the time of the adoption of the constitutional amendment until the organization of the new board shall be paid as though the old board had been continued in full force and effect until the organization of the new board, and shall be paid out of the appropriation for such purposes made for the former board.

Officers of municipal corporations heretofore required to make reports to the state board of equalization shall report to the board hereby constituted.

History: En. Sec. 7, Ch. 3, L. 1923.

84-708. (2122.8) **Powers and duties.** It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) To prescribe rules and regulations, not in conflict with the constitution and laws of the state of Montana, to govern county boards of equalization and the assessors of the different counties in the performance of their duties.

(2) To prepare and enforce the use of forms in relation to the assessment of property.

(3) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis; provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the county assessor of the county wherein they are situate.

(4) To transmit to the county clerk of each county its apportionment of all assessments made by such board.

(5) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of county assessors and county boards of equalization; change, increase or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose shall call an annual meeting of all county assessors to be held at the state capitol and notice shall be given to each county assessor at least ten (10) days before such meeting, and it shall be the duty of all county assessors to attend and the costs of their attendance shall be paid by the respective counties. Further, the state board of equalization is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the board and the costs of such appraisers and assessors attending shall be borne by the respective counties. Further, the state board shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary, on the campus of Montana state university in co-operation with the bureau of business and economic research and the school of business administration, providing that there are university facilities and authorities available. The board shall notify all assessors and appraisers and county commissioners at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the respective counties. Further, one or more members of the board shall visit at least one fourth (¼) of the counties of the state annually, and shall visit every county in the state at least once in four (4) years to examine the work and methods of county assessors, boards of county commissioners, county boards of equalization, and county treasurers in their assessment and equalization of taxes on all kinds of property within the county.

(7) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(8) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against

assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(9) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(10) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the board in such form and upon such blanks as the board shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the board all blanks so transmitted and in every way aid the board in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the board.

(11) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the board. Upon completion of such inspection and examination the board shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the board to secure the necessary information. A duplicate of such statement shall be filed in the office of the state board of examiners and when approved and allowed shall be paid the same as other expenses of the board. Within sixty days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(12) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the board to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(13) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the board shall have authority to investigate and determine.

(14) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested

party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the board shall have authority to investigate and determine.

(15) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(16) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(17) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the board, and to furnish the governor such assistance as he may require.

(18) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963.

Increased Valuations

State board of equalization, which issued a directive to board of county commissioners and county assessor in November, 1963 requiring use of certain valuations on grades of farm land for 1964 and years thereafter, which the officials of the county refused to do, was entitled to mandamus to compel the county officials to comply with the directive. Alleged impossibility of compliance on July 22, 1964 was no defense. The officials had from November until the second Monday in August to accomplish the task but chose to do nothing except contest the matter. State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 769.

Intervention of Court

The state board of equalization as a taxing body, while properly exercising its authority, is supreme; in the exercise of its powers it has a wide discretion, and its decisions, when honestly arrived at, will not be disturbed by the courts; where, however, it has pursued a fundamentally wrong method of assessment or has acted fraudulently or maliciously, or where error so gross as to be inconsistent with any exercise of honest judgment is shown, courts will grant relief. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 60, 17 P 2d 68.

The supreme court will not, in a tax recovery action where overvaluation is alleged, substitute its judgment for that of the taxing officials, and will not notice an alleged overvaluation honestly made, but will grant relief only where the overvaluation is so gross as to be inconsistent with the exercise of honest judgment. Investors Security Co. v. Moore, 113 M 400, 405, 127 P 2d 225.

Court may not intervene where action of the board is not arbitrary, fraudulent or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Mandamus

A county may be compelled by a writ of mandate to comply with the directives of the state board of equalization. State ex rel. State Board of Equalization v. Vanderwood, — M —, 405 P 2d 652, 654.

Powers of State Board of Equalization

Board is charged with the duty of ad-

justing and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Tax Base of Railroads

The state board of equalization has authority under section 15, article XII of the constitution of Montana to issue directive to county officers with respect to determination of property tax base of railroads. State ex rel. State Board of Equalization v. Vanderwood, — M —, 405 P 2d 652, 655.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

References

State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 M 420, 424, 219 P 638; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Carlson v. Flathead County, 130 M 24, 293 P 2d 273, 276; Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

84-709. (2122.9) **Appeal to state board of equalization—hearing.** Any person, firm or corporation or the board in behalf of the state, or any municipal corporation, aggrieved by the action of any county board of equalization, may appeal to the state board by filing with the county board a notice of appeal, and a duplicate thereof with the state board, within ten days after the action of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least five days notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record or may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members, to its secretary, counsel or chief auditor for the conduct of such hearing, and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the person designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board.

History: En. Sec. 9, Ch. 3, L. 1923; amd. Sec. 1, Ch. 33, L. 1939.

Burden of Proof

The state board of equalization on appeal by a number of owners of irrigated and irrigable lands in a certain county, after a hearing, reduced the valuations made by the assessor and approved by the county board of equalization. Relator, owner of like lands in the same vicinity who had not complained of his assessment or appeared at the hearing to object to the granting of relief to appellants, instituted proceedings in certiorari in the supreme court, attacking the jurisdiction of the board in making its order, in effect alleging that by the order he was being discriminated against. He charged neither fraud nor that the board had adopted a fundamentally wrong principle of assessment. The proceedings were dismissed on

failure of the relator to show that the board had acted in excess of its authority. State ex rel. Schoonover v. Stewart, 89 M 257, 273 et seq., 297 P 476.

Findings of State Board of Equalization

The decision of the state board of equalization made after hearing the appeal of a taxpayer from an adverse ruling of a county board of equalization is quasi-judicial, and on application for writ of certiorari the supreme court may not go back of the record made by the state board, the presumption obtaining that its findings were justified by the testimony heard by it at the hearing. State ex rel. Schoonover v. Stewart, 89 M 257, 273 et seq., 297 P 476.

Reduction of Valuations

Where the state board of equalization, at the time it makes an order reducing assessments on a given class of lands on appeal of certain of the taxpayers, knows that there are other owners in like situation, its full duty in the premises is not discharged by the order of reduction in the specific instances, but it is its further duty, after giving notice, to reduce valuations of such others to avoid discrimination, i. e., to equalize the values; its failure in that behalf, however, does not deprive such others of their rights. State ex rel. Schoonover v. Stewart, 89 M 257, 273 et seq., 297 P 476.

Refusal of County and State Boards to Act

In an action in the district court for a writ of mandamus by a taxpayer to compel the state board of equalization to reduce the valuation of unimproved lots in the outskirts of a city from $51,325 to $5,420, where the evidence showed the value thereof not to exceed about $5,400, the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant board to reduce the valuation to a figure consistent with the proof of the actual cash value. Corcoran v. State Board of Equalization, 116 M 499, 502, 154 P 2d 795.

When Aggrieved Taxpayer May Resort to Courts

The state board of equalization in a hearing on appeal to it involving a tax matter acts in a quasi-judicial capacity, and the presumption obtains that its findings were justified by the evidence taken at the hearing. An aggrieved taxpayer may resort to the courts for review if he can show fraud or other unlawful acts, such as arbitrary increase of valuation, wrong principle of assessment, or error so gross as to be inconsistent with any honest exercise of judgment, but if his complaint is not so predicated it does not state a cause of action. (Section 84-4503 held unconstitutional in part.) International Business Mach. Corp. v. Lewis and Clark County, 111 M 384, 387, 112 P 2d 477.

Collateral References

Taxation⇐449 (5).
84 C.J.S. Taxation § 496.

84-710. (2122.10) **Notice of intention to change assessment.** When the state board of equalization shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state board) said board shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by certified letter deposited in the post office postpaid, and directed to said taxpayer at his last known place of residence, at least ten (10) days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state board of equalization shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than

one county the board shall fix the time and place of hearing so as to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

History: En. Sec. 10, Ch. 3, L. 1923; amd. Sec. 1, Ch. 89, L. 1959.

Proceedings

Where the state board of equalization acting under this section held "show cause hearings" to afford opportunity to protest the board's order of uniform land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

References

State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

84-711. (2122.11) **Assessment of omitted property—limitation.** Whenever the state board of equalization shall, in any year, discover that any taxable property of any person has not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the state board may assess the same for such year or for such previous years. The order making the assessment shall contain the name of the person to whom the property is assessed, a general description of such property, its assessed valuation, the year for which it is assessed and the county in which the same is assessed. A copy of such order shall be transmitted to the officer of the county, in whose possession the assessment books of such county are at the time of the making of such order by the board, and such officer shall immediately after receiving such copy, enter the assessment on the tax books of the county for the year in which such order is made, and thereupon such assessment shall have the same force and effect as though originally made by the county assessor; provided, however, that before making any such assessment the state board of equalization shall give the person to whom such property is proposed to be assessed, notice of its intention to make such assessment, and the time and place when a hearing will be had thereon; such notice to be given either by registered letter or personal service at least ten days before the date so fixed for such hearing; and provided further that all assessments of omitted property must be made within three years after the end of the calendar year in which the same should have been assessed.

History: En. Sec. 11, Ch. 3, L. 1923.

Constitutionality

Chapter 3, Laws of 1923 (84-701 et seq.) empowering the state board of equalization by this section to assess property which theretofore escaped taxation, provided the assessment be made within three years after the end of the calendar year in which the same should have been assessed, is not open to the objection that it is retroactive in its operation. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 257 et seq., 229 P 730.

References

Simpson v. Silver Bow County, 87 M 83, 95, 285 P 195; State ex rel. Snidow v. State Board of Equalization, 93 M 19, 60, 17 P 2d 68.

Collateral References

Taxation⊂437.
84 C.J.S. Taxation § 417.
51 Am. Jur. 689, Taxation, § 753 et seq.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.
Sufficiency of compliance with statute providing for service by mail of notice in tax procedure. 155 ALR 1279.

84-712. (2122.12) **Statement of changes to be sent to county clerk.** The secretary of the board shall transmit to each county clerk a statement of the changes made by the board in the assessment book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the board resulting in the action which is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923.

Collateral References
Taxation⇐449 (5).
84 C.J.S. Taxation § 496.

84-713. (2122.13) **Determination of state rate of taxation—notice of.** Between the first and third Mondays of August of each year, the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing twelve per cent for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The board must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state board of equalization thereof.

History: En. Sec. 13, Ch. 3, L. 1923.

Collateral References
Taxation⇐305.
84 C.J.S. Taxation § 361.

84-714. (2122.14) **Penalty for refusal to furnish information.** If any person shall refuse inspection of any books or records when requested by the board or its authorized agent, or shall refuse or neglect to furnish any information called for by the board in the performance of its official duties relating to the assessment and taxation of property the board shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable, and may add to its assessment thus made not more than twenty per cent thereof as a penalty for such refusal or neglect. The board shall immediately notify the person so assessed of its action, either by registered mail or by personal service of such notice. Such action of the board and the assessment so made shall be final and conclusive unless the party so assessed, (1) shall, within twenty days after receiving such notice, furnish all information requested by the board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then from all information presented to it or from its own investigation make such assessment as to it seems just and equitable; or, (2) unless the party assessed shall within sixty (60) days after receiving such notice, appeal to the district court of Lewis and Clark county from the action of the board in making such assessment and imposing such penalty by serving on the board and filing in the office of the clerk of said district court notice of appeal therefrom together with a bond conditioned for the payment of such amount as the judgment of said court may require within thirty (30) days after the entry of such judgment. Upon the hearing of such appeal the court shall determine whether the board of equalization was entitled to inspect such books or records, or was entitled to the information requested by the board, and if the court shall find that the board was entitled to inspect such books or records or was entitled to the

information requested by the board, the court shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the board but if the court shall find that the board was not entitled to inspect such books or records, or was not entitled to the information requested by the board, then the court shall enter a judgment changing and modifying the assessment made by the board by striking out the penalty added thereto by the board.

History: En. Sec. 14, Ch. 3, L. 1923.

Collateral References
Taxation⇐837.
85 C.J.S. Taxation § 1024.

84-715. (2122.15) **Duties of public officers.** It shall be the duty of all public officers of the state and of any municipality to give to the board information in their possession relating to taxation when required by the board, and to co-operate with and aid the board in every manner in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923.

Collateral References
Taxation⇐450 (1).
84 C.J.S. Taxation § 503.

84-716. (2122.16) **Hearings, witnesses, contempt, fees and subpoenas.** Oaths to witnesses in any investigation by the board may be administered by the secretary or a member of the board. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board, or to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

History: En. Sec. 16, Ch. 3, L. 1923.

84-717. (2122.17) **Seal.** The state board of equalization shall have a seal and such seal shall have the following words engraved thereon, "Board of Equalization of the State of Montana." The board shall authenticate all of its orders, records and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923.

Collateral References
Taxation⇐446½.
84 C.J.S. Taxation § 497.

84-718. (2122.18) **Unconstitutionality or invalidity.** If any clause, sentence, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be con-

fined, in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act, or of any part thereof.

History: En. Sec. 18, Ch. 3, L. 1923.

Collateral References
Statutes⇨64 (8).
82 C.J.S. Statutes § 104.

84-719. (2122.19) **Assessment and apportionment by board — when made.** The state board of equalization must, on or before the third Monday in July of each year, assess the net proceeds of all mines and all property required by law to be assessed by such board, and must apportion to the counties and to the cities, towns, school districts and other taxing districts therein, in the manner provided by law, the total assessment of each of the properties so assessed by such board.

History: En. Sec. 1, Ch. 180, L. 1925.

Collateral References
Taxation⇨382.
84 C.J.S. Taxation § 450.

84-720. (2122.20) **Transmission of assessment and apportionment to county clerk.** The state board of equalization must, on or before the fourth Monday in July of each year, transmit to the county clerk of each county to which any such apportionment is made, a statement with reference to each property so assessed and apportioned, containing a description thereof sufficient for identification, and stating the kind and character and the amount, quantity and extent of such property and the value thereof in each city, town, school district and other taxing district within the county, and the total value thereof in the county, and such board must, at the time of transmitting such statement to the county clerk, transmit a copy thereof to the owner of such property or to the person to whom the same is to be assessed.

History: En. Sec. 2, Ch. 180, L. 1925.

84-721. (2122.21) **Entering of state board's assessment in assessment book.** The county clerk must, on the receipt of each such statement from the state board of equalization, immediately enter on the assessment books of the county the assessment of such property as contained in such statement, and the same shall constitute the assessment of such property for taxation purposes in such county and in such cities, towns, school districts and other taxing districts of such county; provided that if any city or town in such county shall have provided by ordinance for the collection of its taxes by its own officers the county clerk must immediately after entering such assessment on the assessment books of the county, transmit a copy of so much of such statement as affects such city or town to the clerk thereof, and such city or town clerk shall on receipt thereof enter such assessment on the assessment books of such city or town. All such property is taxable upon such assessment at the same rate, by the same officers, and for the same purposes as other taxable property within such counties, cities, towns, school and other taxing districts, respectively, and such taxes must be

collected in the same manner and by the same officers as other taxes are collected.

History: En. Sec. 3, Ch. 180, L. 1925.

Collateral References
Taxation⇨411.
84 C.J.S. Taxation § 456.

84-722. (2122.22) **Change of assessment—application—hearing—reassessment.** At any time after the assessment of any property by the state board of equalization, and before the fourth Monday in August of the year in which such assessment is made, the owner of such property, or the person to whom the same is assessed, may make written application to the state board of equalization to have such assessment changed or corrected in any respect or particular, or to have the assessment set aside and a reassessment made by such board, which application must set forth specifically the grounds and reasons on which such application is based. On receipt of any such application the board must make an order fixing a day for hearing the same, giving the applicant at least ten days notice in writing of the day so fixed for such hearing. And the state board of equalization may, on its own initiative, when it believes that an error or mistake has been made in an assessment made by it, or that it is for the best interests of the state so to do, at any time before the fourth Monday in August of the year in which such assessment is made, make an order for a hearing thereon, giving the owner of or person to whom such property is assessed, at least ten days written notice of the day so fixed for such hearing, in which said notice and order must be stated briefly, the mistake or error believed to exist by such board and the manner in which it is proposed to correct the same, or wherein the interests of the state require a change to be made in such assessment and the nature of the change proposed therein. On any such hearing, whether held on application of the owner or person to whom the property is assessed or on the initiative of the state board of equalization, such board, after hearing and considering all evidence introduced on such hearing, may make such changes or corrections in such assessment as it may deem necessary and proper, or may set aside such assessment and make a reassessment of such property; provided that all such hearings must be held and all such changes, corrections or reassessments made by the state board of equalization before the second Monday in October. When any change or correction is made in any assessment, or any reassessment is made as the result of such hearing the board of equalization must, within fifteen days thereafter, transmit to the county clerk of each county to which such property has been apportioned, or which is affected by such changes, corrections or reassessments, a statement (which) shall be in the same form and contain the same details as the statement required by section 84-720. On receipt of any such statement the county clerk must immediately make the necessary and proper changes in the assessment of such property on the assessment books of the county as shown by such statement, and if any change or correction in such assessment or such reassessment affects any city or town which collects its taxes by its own officer, the county clerk must, after entering the same on the assessment books of the county, transmit to such city or town clerk so much of such statement as affects such

city or town and such city or town clerk must thereupon make such changes and corrections on the assessment books of such city or town.

History: En. Sec. 4, Ch. 180, L. 1925.

Collateral References
Taxation⇨468.
84 C.J.S. Taxation § 523.

84-723. (2122.23) **Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes imposed on state board of equalization.** The duty of collecting the nonresident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to wit: The corporation license tax, taxes on express companies and sleeping car companies, coal mines, and dealers license taxes, metalliferous mines license tax, cement producers and dealers license taxes, the gasoline distributors and dealers license tax, the oil producer's license tax and all other license taxes determined by the state board of equalization, the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state board of equalization; such collections to be turned over to the state treasurer on the 10th and 25th day of each and every month, and it is further provided that all duties heretofore imposed by law upon the state treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state board of equalization.

History: En. Sec. 1, Ch. 79, L. 1927.

Collateral References
Taxation⇨550.
84 C.J.S. Taxation § 657.

84-724. Destruction of tax records authorized—procedure. Notwithstanding the provisions of any other chapter of this code, the state board of equalization is authorized to destroy tax records more than five (5) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be by unanimous vote of the members of the state board of equalization entered upon an authenticated list of records authorized to be destroyed. A copy of the authorization and authenticated list shall be entered in the minutes of the board by its secretary.

History: En. Sec. 1, Ch. 187, L. 1963.

84-725. Suspense account for receipts and refunds. The state board of equalization shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the board. All moneys received by the board shall be temporarily credited by the state treasurer to the board's suspense account. Each month the board shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

History: En. Sec. 1, Ch. 126, L. 1963.

84-726. Refund of overpayments—time of filing claims for refund—procedure. (1) When there has been an overpayment of the inheritance

tax collected by county treasurers or any other tax collected by the state board of equalization, and there is no law providing for a refund, the board shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state board of equalization shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the taxpayer and shall grant a hearing on the claim. If the board disapproves a claim after holding a hearing, the determination of the board may be reviewed as provided by section 84-4923.1.

History: En. Sec. 2, Ch. 126, L. 1963.

84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration. The state board of equalization shall assess, for the purpose of personal property taxes, interstate motor vehicle fleets proportionally registered under the provisions of sections 53-701 to 53-724, and said assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by section 53-712. Interstate motor vehicle fleets are hereby declared assessable for taxation purposes upon application for proportional registration and shall be assessed to the persons who own or claim, or in whose possession or control the fleet is at the time of the application. Any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this act or any other provision of the laws of Montana between January 1st and April 1st shall be taxed for a full year. Any fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this act or any other law of the state of Montana after April 1st shall have taxes apportioned as provided in section 84-6011. Any fleet, contained in a renewal application, shall be assessed and taxed for a full year. Vehicles contained in a fleet for which current taxes have been assessed and paid shall not be assessed under this section upon presentation to the board of equalization of proof of payment of tax for the current registration year. The payment of personal property taxes are a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

History: En. Sec. 1, Ch. 89, L. 1965.

84-728. Valuation of interstate fleets—determination of aggregate tax due. The state board of equalization shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(a) The purchase price depreciated by a schedule as prescribed by the board shall determine the depreciated value.

(b) The depreciated value multiplied by the per cent of miles traveled in Montana as prescribed by section 53-712 shall be the assessed value.

(c) The sum of the assessed value of all vehicles included in the fleet multiplied by twenty (20) per cent shall be the taxable value for the entire fleet.

(d) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the state-wide average county mill levy plus state levies as hereinafter provided.

History: En. Sec. 2, Ch. 89, L. 1965.

84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration. The state board of equalization shall determine the aggregate tax in the entire state for: (1) state, (2) county, (3) local purposes, levied on the general property of the state in the previous year excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection and protection purposes.

From the total taxable valuation of the general property of the state including net proceeds and the aggregate tax as determined, the state board of equalization shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of all interstate trucks.

The original cost of each vehicle shall be included on the application for proportional registration under the provisions of sections 53-701 to 53-724. The board shall determine the original cost when the owner does not have this information on new or used vehicles, or in the case of rebuilt vehicles.

History: En. Sec. 3, Ch. 89, L. 1965.

84-730. Situs in state of proportionally registered fleets—collection of property tax. For the purposes of this section, all vehicles previously registered or which registration has been applied for, under the provisions of sections 53-701 to 53-724, are hereby declared to have a situs in the state for the purposes of taxation.

The board or its designated agent shall collect the personal property taxes prescribed herein.

History: En. Sec. 4, Ch. 89, L. 1965.

84-731. Deposit and distribution of taxes on proportionally registered fleets. The personal property taxes described herein and collected shall be deposited with the state treasurer for distribution to the general fund of each county according to the ratio of the taxable valuation of each county to the total state taxable valuation.

History: En. Sec. 5, Ch. 89, L. 1965.

84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee. Certified copies of returns filed for corporation license tax under section 84-1504, and certified copies of returns filed for income tax under section 84-4919, may be furnished by the board of equali-

zation to the taxpayer or his duly authorized representative upon payment of fifty cents (50¢) for each page.

History: En. Sec. 1, Ch. 187, L. 1965.

84-733. Corporation license tax clearance certificates furnished—fee. Upon request of a corporation and upon the payment of one dollar ($1) the board of equalization may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed and that all information has been supplied as required by the provisions of the Corporation License Tax Act.

History: En. Sec. 2, Ch. 187, L. 1965.

84-734. Fees to reimburse board for costs—deposit in general fund. All moneys collected under this act shall be required to reimburse the state board of equalization for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund of the state of Montana.

History: En. Sec. 3, Ch. 187, L. 1965.

84-735. Returns to which act applies. The provisions of this act shall apply to all returns on file and all returns to be filed hereafter.

History: En. Sec. 4, Ch. 187, L. 1965.

CHAPTER 8

RAILROADS OPERATING IN MORE THAN ONE COUNTY—ASSESSMENT FRANCHISE, ETC. BY STATE BOARD OF EQUALIZATION

Section 84-801. Assessment of railroads.
84-802. Assessment, how made.
84-803. Duties of the state board and county assessors respecting statement.
84-804. Record of assessment and apportionment of railroads.

84-801. (2131) **Assessment of railroads.** The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons, owning or operating any railroad in more than one county in this state, must, on or before the first day of April of each year, furnish the said board a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding:

(1). The whole number of miles of railroad in the state; and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association.

(2). The value of the roadway, roadbed, and rails of the whole railroad, and the value of the same within the state.

(3). The width of the right of way.

(4). The number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state.

(5). Number, kind, and value of rolling stock owned and operated in the state.

(6). Number, kind, and value of rolling stock used in the state, but now owned by the party making the returns.

(7). Number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

(8). The whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state.

(9). The number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight, and other cars, or property owned or leased by such corporation, persons, or association.

(10). The number of sleeping and dining cars not owned by such corporation, person, or association, but used in operating the railroads of such corporation, person, or association in the state, or on the line of the road without the state, during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

(11). A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12). Also showing in detail for the year preceding the first of January:

(a). The gross earnings of the entire road;

(b). The gross earnings of the road within the state, and where the railroad is let to other operators, how much was derived by the lessor as rental;

(c). The cost of operating the entire road, exclusive of sinking fund, expenses, of land department, and money paid to the United States;

(d). Net income for such year, and amount of dividend declared;

(e). Capital stock authorized;

(f). Capital stock paid in;

(g). Funded debt;

(h). Number of shares authorized;

(i). Number of shares of stock issued.

(13). Any other facts the state board of equalization may require.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1925. Cal. Pol. C. Sec. 3664.

References

Northern Pacific Ry. Co. v. Brogan, 52 M 461, 464, 158 P 820; Hays v. Smith, 58 M 306, 312, 316, 192 P 615; Ford Motor Co. v. Linnane, 102 M 325, 333, 57 P 2d 803; State v. North American Car Corp., 118 M 183, 164 P 2d 161.

Collateral References

Taxation⇐390-393.
84 C.J.S. Taxation § 426.
51 Am. Jur. 790, Taxation, § 887 et seq.

What property is within provision in relation to local taxation of certain railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board. 80 ALR 252.

84-802. (2132) **Assessment, how made.** The state board of equalization must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county; but franchises derived from the United States must not be assessed. All rolling stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by the assessor of the county wherein they are situate. After making such assessment, the board shall give at least ten (10) days written notice thereof to such owner or operator, designating therein a time and place for hearing thereon, at which time and place such owner or operator, or any taxpayer, may appear before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised. On or before the second Monday in July, the board shall apportion such assessment to the counties, school districts, cities, towns, and other tax subdivision, in which such railroad is located.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1939. Cal. Pol. C. Sec. 3665.

References

Hilburn v. St. Paul, M. & M. Ry. Co., 23 M 229, 242, 58 P 551; Northern Pacific Ry. Co. v. Brogan, 52 M 461, 464, 158 P 820; State v. North American Car Corp., 118 M 183, 164 P 2d 161.

Collateral References

Taxation⇐390-393.
84 C.J.S. Taxation § 426.

84-803. (2133) **Duties of the state board and county assessors respecting statement.** The state board of equalization must, within the time mentioned, in the preceding section, transmit by mail to the county assessor of each county, to which such apportionment is made, a statement in detail sufficient for identification and location of the property, showing the as-

sessed value per mile of the same, as fixed by a prorata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of such railroad, within the state, and the amount apportioned to the county and to each taxing subdivision thereof. The county assessor must enter the statement on the assessment roll of the county.

History: En. Sec. 45, p. 90, L. 1891; re-en. Sec. 3739, Pol. C. 1895; re-en. Sec. 2558, Rev. C. 1907; re-en. Sec. 2133, R. C. M. 1921; amd. Sec. 2, Ch. 13, L. 1939. Cal. Pol. C. Sec. 3665.

References

State v. North American Car Corp., 118 M 183, 164 P 2d 161.

84-804. (2136) **Record of assessment and apportionment of railroads.** The state board of equalization must keep a record of all such assessments and apportionments.

History: En. Sec. 48, p. 92, L. 1891; re-en. Sec. 3742, Pol. C. 1895; re-en. Sec. 2561, Rev. C. 1907; re-en. Sec. 2136, R. C. M. 1921; amd. Sec. 3, Ch. 13, L. 1939. Cal. Pol. C. Sec. 3666.

References

State v. North American Car Corp., 118 M 183, 164 P 2d 161.

CHAPTER 9

TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER LINES —ASSESSMENT BY STATE BOARD OF EQUALIZATION

Section 84-901. Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state board of equalization.
84-902. Statement to be transmitted by county assessor to state board.
84-903. Hearing before the board.
84-904. Hearing for the determination of facts pertaining to assessment.
84-905. Assessment of property—apportionment to counties.
84-906. Transmission of statement of amount apportioned to counties.
84-907. Record of assessment and apportionment of properties.

84-901. (2138) **Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state board of equalization.** The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state board of equalization a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1. The whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association.

2. The total value of the entire property and plant both within and without the state, and the total value of that portion of the same within the state.

3. A complete description of the property within the state, giving the points of entrance into and the points of exit from the state, and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state.

4. Such other information regarding such property as may be required by the state board of equalization.

History: En. Sec. 1, Ch. 49, L. 1919; re-en. Sec. 2138, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1939.

References

Ford Motor Co. v. Linnane, 102 M 325, 334, 57 P 2d 803.

Collateral References

Taxation⇐367, 396.
84 C.J.S. Taxation §§ 427, 433.
51 Am. Jur., Taxation, p. 803, §§ 906-910; p. 823, §§ 935-942.

84-902. (2139) **Statement to be transmitted by county assessor to state board.** The county assessor of every county must, on the first Monday in May of each year, transmit to the state board of equalization a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other similar property in more than one county of the state, whose property, or any part thereof, has been assessed by such county assessor.

2. A complete description of all such property assessed to every such corporation, person, or association, together with the assessed value thereof.

History: En. Sec. 2, Ch. 49, L. 1919; re-en. Sec. 2139, R. C. M. 1921; amd. Sec. 2, Ch. 17, L. 1939.

Collateral References

Taxation⇐364.
84 C.J.S. Taxation § 421.

84-903. (2141) **Hearing before the board.** After making such assessment, the board shall give at least ten (10) days' written notice thereof to the person or persons to whom the assessment is made, designating a time and place for hearing thereon, at which time and place such person or persons, or any taxpayer may appear before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised.

History: En. Sec. 4, Ch. 49, L. 1919; re-en. Sec. 2141, R. C. M. 1921; amd. Sec. 5, Ch. 17, L. 1939.

Collateral References

Taxation⇐407.
84 C.J.S. Taxation § 429.

84-904. (2142) **Hearing for the determination of facts pertaining to assessment.** If any corporation, person or association shall fail, neglect, or refuse to furnish the state board of equalization with a full, true, and correct statement as required, and within the time, by section 84-901, or if the board shall have reason to believe that any such statement furnished the board is incorrect or erroneous in any particular, the board shall order a hearing for the purpose of ascertaining and determining such facts as will enable the board to assess the property of such corporation, person or association in accordance with the provisions of section 84-905. At least ten days' written notice of such hearing shall be given to such corporation, person, or association, and on such hearing the board shall ascertain and

determine each and all of the matters and facts which should have been stated in such statement.

History: En. Sec. 5, Ch. 49, L. 1919; re-en. Sec. 2142, R. C. M. 1921; amd. Sec. 3, Ch. 17, L. 1939.

84-905. (2143) **Assessment of property—apportionment to counties.** The board must assess all the properties described in section 84-901, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the board shall deem proper.

On or before the second Monday in July, the board shall apportion such assessment to the counties in which the properties are situated.

History: En. Sec. 6, Ch. 49, L. 1919; re-en. Sec. 2143, R. C. M. 1921; amd. Sec. 4, Ch. 17, L. 1939.

Actual Value

This section does not establish an arbitrary rule of assessment, but only requires that the total value of the plant and property, wherever situated, shall be taken into consideration in determining the actual cash value for taxation of that portion of the plant and property situated within this state. State v. State Board of Equalization, 56 M 413, 444, 185 P 708.

Since the state board of equalization is an agency created by the constitution, with well-defined powers, discretionary in character, and this act (84-901 to 84-907) does not attempt to direct the board as to the method or means to be pursued by it in arriving at the actual value of the property of electric power corporations, the supreme court cannot, by writ of mandate, interfere and direct the board how to make the assessment; so long as it is not guilty of fraud, and does not adopt a fundamentally wrong principle of assessment, the supreme court cannot interpose, or substitute its judgment for that of such board. State v. State Board of Equalization, 56 M 413, 444, 185 P 708.

Apportionment among Counties

Apportionment means the process by which the state board of equalization spreads out the total value of a system among the counties through which the system passes. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 61.

Construction of Act

This act (84-901 to 84-907) does not repeal existing statutes on the subject of assessment, but is to be treated as a supplement thereto. The various sections of the act, and of existing acts, are, therefore, in pari materia, and are to be construed together. State v. State Board of Equalization, 56 M 413, 444, 185 P 708.

This act does not affect section 84-401, and that section is to be considered in connection with it. State v. State Board of Equalization, 56 M 413, 444, 185 P 708.

84-906. (2144) **Transmission of statement of amount apportioned to counties.** The state board of equalization, must, not later than the second Monday of July, transmit or mail to the county assessor of each county to which such apportionment has been made, a statement showing the length of the property in such county; a description of the same sufficient for identification; the assessed value of the same as determined by the board; and the amount apportioned to the county. The county assessor must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county.

History: En. Sec. 7, Ch. 49, L. 1919; re-en. Sec. 2144, R. C. M. 1921; amd. Sec. 6, Ch. 17, L. 1939.

Collateral References

Taxation⇨411.
84 C.J.S. Taxation § 456.

84-907. (2146) **Record of assessment and apportionment of properties.** The state board of equalization must keep a record of all such assessments and apportionments.

History: En. Sec. 9, Ch. 49, L. 1919; re-en. Sec. 2146, R. C. M. 1921; amd. Sec. 7, Ch. 17, L. 1939.

CHAPTER 10

LICENSE TAXES—CARBON BLACK PRODUCERS

Section 84-1001. Carbon black producers' license.
84-1002. Amount of tax.
84-1003. Time for payment—credit to general fund.
84-1004. Statement to board—contents—time for filing.
84-1005. Records to be kept as required by board.
84-1006. Statement of production—time for making—collection of tax.
84-1007. Unlawful to fail to file or to falsify statement.
84-1008. Board to compute tax if no statement filed—penalty and interest—collection of tax.
84-1009. Penalty for violations.
84-1010. Tax additional to other required taxes and fees.

84-1001. (2380.1) **Carbon black producers' license.** The term "person," as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint-stock company, syndicate and association.

The term "carbon black," as used in this act, shall mean and include any kind of carbon black or gas carbon, gas graphite, or any form of carbon produced from natural gas, of whatsoever grade or quality, whether produced by a burning, a heating, a cracking, or any chemical or mechanical or other process whatsoever.

History: En. Sec. 1, Ch. 97, L. 1929.

Collateral References
Licenses⇐12.
53 C.J.S. Licenses § 30.
33 Am. Jur. 332, Licenses, § 9.

84-1002. (2380.2) **Amount of tax.** Every person engaged in or carrying on within this state the business of producing or manufacturing for sale, profit or use the commodity or substance known as "carbon black," hereinabove defined, must, for the year 1929, and each year thereafter when engaged in or carrying on any such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business in an amount equal to one-eighth (⅛) of one cent (1c) for each pound of carbon black produced or manufactured by such person within the state during such year.

History: En. Sec. 2, Ch. 97, L. 1929.

Collateral References
Licenses⇐12, 29.
53 C.J.S. Licenses §§ 30, 48.

84-1003. (2380.3) **Time for payment—credit to general fund.** Such license tax shall be paid in semiannual installments for the semiannual periods ending respectively June thirtieth and December thirty-first, of each year beginning with the semiannual period ending June 30, 1929, and the amount of the license tax for each semiannual period shall be paid to the

state treasurer within thirty (30) days after the end of each semiannual period and when received by the state treasurer shall be credited to the general fund of the state.

History: En. Sec. 3, Ch. 97, L. 1929.

84-1004. (2380.4) **Statement to board—contents—time for filing.** Each and every person engaged in such business in the state of Montana at the time when this act becomes effective must, not later than the thirtieth day of April, 1929, and every person who shall engage in such business at any time after the date when this act becomes effective, must immediately, upon engaging in such business, file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaged in and carrying on such business in this state, giving the place or places of business and the location of the plant or plants for the production of carbon black owned, leased, controlled, or operated by such person; the name and address of the managing agent in this state if an association, corporation, joint stock company or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 97, L. 1929.

84-1005. (2380.5) **Records to be kept as required by board.** Every such person shall keep a record in such form as the state board of equalization may require of all carbon black produced or manufactured by such person in this state and such records shall at all times during the business hours of the day, be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 97, L. 1929.

84-1006. (2380.6) **Statement of production—time for making—collection of tax.** (1) Each and every person must, within thirty (30) days after the semiannual period ending June 30, 1929, and within thirty (30) days after the end of each following semiannual period, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the quantity of carbon black produced or manufactured by such person in the state of Montana during each month of such semiannual period and during the whole of said semiannual period, together with the total amount due the state as license tax for such semiannual period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the semiannual period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the same.

(2) Any such person engaged in or carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one carbon black plant in this state, may include all thereof in one statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with the number one (1) for each year followed by the year. The state treasurer shall keep a book in such form as shall be approved by the state board of equalization, in which he shall enter each statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return, and the amount of tax, if any, paid by such person, which book shall be designated "State Treasurer's Record of Carbon Black Production License Tax." The state treasurer shall within ten days after the end of each month deliver over to the state board of equalization all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state board of equalization. It shall be the duty of the state board of equalization to examine each of such statements and compute the taxes thereon, and the amount so computed by the board shall be the taxes imposed, assessed against and payable by the person making the statement for the semiannual period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state board of equalization within ten days after written notice of the amount of the deficiency shall be mailed by the state board of equalization to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 6, Ch. 97, L. 1929.

Collateral References
Licenses⇨30, 32 (1).
53 C.J.S. Licenses §§ 49, 51.

84-1007. (2380.7) **Unlawful to fail to file or to falsify statement.** It shall be unlawful for any such person to fail, neglect, or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 97, L. 1929.

84-1008. (2380.8) **Board to compute tax if no statement filed—penalty and interest—collection of tax.** If any such person shall fail, neglect, or refuse to file any statement required by the provisions of this act within the time therein required, the state board of equalization shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of carbon black produced or manufactured by such person in this state during such semiannual period and during each month thereof, and shall determine and fix the amount of the license tax due the state

from such person for such semiannual period, and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five per centum (25%) thereof and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per centum (12%) per annum from the date of the making of such statement by the state board of equalization, until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same.

History: En. Sec. 8, Ch. 97, L. 1929.

84-1009. (2380.9) **Penalty for violations.** Any violation of any of the provisions of this act shall be deemed a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars ($1,000.00), or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 97, L. 1929.

84-1010. (2380.10) **Tax additional to other required taxes and fees.** The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 10, Ch. 97, L. 1929.

CHAPTER 11

LICENSE TAXES—CEMENT DEALERS

Section 84-1101. "Person" defined.
84-1102. License tax on sales of cement, etc.
84-1103. Statement to be filed with board of equalization.
84-1104. Quarterly payment of license fee.
84-1105. Record of cement received.
84-1106. Quarterly statement of produce sold on which no tax paid—payment of tax.
84-1107. Duty to file statement.
84-1108. Procedure to ascertain tax on failure of statement—penalty.
84-1109. Expiration of licenses.
84-1110. Invoice to state whether tax paid.
84-1111. Issuance and term of license.
84-1112. Disposal of license taxes.
84-1113. Penalty for violation of act.
84-1114. License tax supplemental.

84-1101. (2367) **"Person" defined.** The term "person," as used in this act means and includes every individual, firm, association, joint-stock company, syndicate and corporation.

History: En. Sec. 1, Ch. 16, Ex. L. 1921; re-en. Sec. 2367, R. C. M. 1921.

84-1102. (2368) **License tax on sales of cement, etc.** Every person who engages in, or carries on the occupation or business in this state of re-

tailing or selling at retail cement, cement plaster, gypsum plaster, or other byproducts of cement, must, for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a tax of one dollar, together with an additional sum or amount equal to four cents per barrel of three hundred seventy-six pounds of cement, and five cents per ton of two thousand pounds on cement plaster, gypsum plaster, or other byproducts of cement sold by such person during such year, and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state of Montana, under any law of this state.

History: En. Sec. 2, Ch. 16, Ex. L. 1921; re-en. Sec. 2368, R. C. M. 1921; amd. Sec. 2, Ch. 127, L. 1925.

Collateral References

Licenses⇐15 (1), 29.
53 C.J.S. Licenses §§ 30, 48.
33 Am. Jur. 362, Licenses, § 36.

84-1103. (2369) **Statement to be filed with board of equalization.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the thirtieth day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if any association, joint-stock company, syndicate or corporation, or if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state board of equalization may require.

History: En. Sec. 3, Ch. 16, Ex. L. 1921; re-en. Sec. 2369, R. C. M. 1921.

84-1104. (2370) **Quarterly payment of license fee.** The said license tax of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional license tax of four cents per barrel and twenty cents per ton shall be paid in quarterly installments for the quarters ending March 31st, June 30th, September 30th, and December 31st, in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license tax becoming due for any quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 16, Ex. L. 1921; re-en. Sec. 2370, R. C. M. 1921.

Collateral References

Licenses⇐32 (1).
53 C.J.S. Licenses § 51.

84-1105. (2371) **Record of cement received.** Each and every person engaging in or carrying on such occupation in this state shall keep a record

showing all cement, cement plaster, gypsum plaster and other byproducts of cement purchased or received by or delivered to such person for sale by such persons at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster or other byproducts of cement, no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 16, Ex. L. 1921; re-en. Sec. 2371, R. C. M. 1921.

84-1106. (2372) **Quarterly statement of produce sold on which no tax paid—payment of tax.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of the following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 16, Ex. L. 1921; re-en. Sec. 2372, R. C. M. 1921.

84-1107. (2373) **Duty to file statement.** It shall be unlawful for any person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time required, or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 16, Ex. L. 1921; re-en. Sec. 2373, R. C. M. 1921.

84-1108. (2374) **Procedure to ascertain tax on failure of statement—penalty.** If any person shall fail, neglect or refuse to make or file the statement required by section 84-1106 within the time required, the state board of equalization shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes

due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license taxes and shall add to the amount of such license taxes twenty-five per cent thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per cent per annum, from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 16, Ex. L. 1921; re-en. Sec. 2374, R. C. M. 1921.

Collateral References
Licenses⚿30, 41.
53 C.J.S. Licenses §§ 49, 62.

84-1109. (2375) **Expiration of licenses.** All licenses issued under the provisions of this act shall expire on the thirty-first day of December following the date of issuance.

History: En. Sec. 9, Ch. 16, Ex. L. 1921; re-en. Sec. 2375, R. C. M. 1921.

Collateral References
Licenses⚿38.
53 C.J.S. Licenses § 43.

84-1110. (2376) **Invoice to state whether tax paid.** Every person engaged in the business in this state of manufacturing or producing cement, cement plaster, gypsum plaster or other byproduct of cement shall make out and deliver to every person to whom any of such commodities are sold or delivered by such person, an invoice covering the commodity or commodities so sold or delivered on which invoice shall be stated whether or not such person has paid, or assumes liability for the payment of the license tax for manufacturing or producing the same, to the state of Montana, under any laws of this state.

History: En. Sec. 10, Ch. 16, Ex. L. 1921; re-en. Sec. 2376, R. C. M. 1921.

84-1111. (2377) **Issuance and term of license.** Upon payment of the license tax for the first quarter in each year by any person engaging in or carrying on the occupation of selling cement, cement plaster, gypsum plaster or other byproducts of cement at retail in this state, the state treasurer shall issue to the person paying the same a license which shall recite therein that the same shall be and remain in full force and effect for the whole of such year, provided the person to whom it is issued shall thereafter make all payments of quarterly installments of license taxes as the same may become due, and such license shall be kept conspicuously posted in the place of business of such person.

History: En. Sec. 11, Ch. 16, Ex. L. 1921; re-en. Sec. 2377, R. C. M. 1921.

84-1112. (2378) **Disposal of license taxes.** All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 12, Ch. 16, Ex. L. 1921; re-en. Sec. 2378, R. C. M. 1921.

Collateral References
Licenses⇐33.
53 C.J.S. Licenses § 56.

84-1113. (2379) **Penalty for violation of act.** Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 13, Ch. 16, Ex. L. 1921; re-en. Sec. 2379, R. C. M. 1921.

Collateral References
Licenses⇐40.
53 C.J.S. Licenses § 66.

84-1114. (2380) **License tax supplemental.** The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 14, Ch. 16, Ex. L. 1921; re-en. Sec. 2380, R. C. M. 1921.

Collateral References
Licenses⇐28.
53 C.J.S. Licenses § 46.

CHAPTER 12

LICENSE TAXES—CEMENT AND GYPSUM PRODUCERS

Section 84-1201. "Person" defined.
84-1202. License tax on producers and importers of gypsum and cement.
84-1203. "Import" defined.
84-1204. Quarterly payment of tax.
84-1205. Statements to be filed with board of equalization.
84-1206. Manufacturers to keep records.
84-1207. Quarterly statement and payment of tax.
84-1208. Duty to file statement.
84-1209. Procedure to ascertain tax on failure of statement—penalty.
84-1210. Disposal of taxes.
84-1211. Penalty for violation of act.
84-1212. License tax supplemental.

84-1201. (2356) **"Person" defined.** The term "person," as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint-stock company and association.

History: En. Sec. 1, Ch. 15, Ex. L. 1921; re-en. Sec. 2356, R. C. M. 1921.

84-1202. (2357) **License tax on producers and importers of gypsum and cement.** Every person engaged in or carrying on the business in the state of Montana of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum, and any person who imports into this state any such products for sale or use, must, for the year 1945 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state board of equalization for the use of the state of Montana, a license tax for engaging in and carrying on such business in the state of Montana in an amount equal to the following sums:

1. For each and every barrel of cement containing 376 pounds produced or manufactured by such person or used by such person in the manufacture

or production of any of the articles or products hereinabove enumerated, or imported by such person into this state for sale or use, four (4) cents.

2. For each and every ton of 2000 pounds of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named, or imported by such person into this state for such sale or use, five (5) cents.

3. The words "products of cement or gypsum" as used in this section shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than fifty per cent (50%) by weight. No double taxation of either cement, gypsum or the products thereof is imposed by this act.

History: En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R. C. M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; amd. Sec. 1, Ch. 192, L. 1945.

Collateral References

Licenses⇨12, 15 (1), 29.

53 C.J.S. Licenses §§ 30, 48.

33 Am. Jur., Licenses, p. 332, § 9; p. 345, § 25.

DECISIONS UNDER FORMER LAW

Other Products

In an action under this section, as amended in 1931, adding "other products," to enjoin collection of tax on manufactured gypsum wallboard, state was in error in contending that "other products" as used in this section by implication included gypsum wallboard, since, under doctrine of ejusdem generis, the legislature meant gypsum products made and handled like plaster, the administrative measurements as used in the act (84-1201 et seq.) being only barrels and tons and not square feet as wallboard is handled and sold, the uncertainties being resolved in favor of the taxpayer. United States Gypsum Co. v. State Board of Equalization, 116 M 275, 278, 149 P 2d 774.

84-1203. (2357.1) **"Import" defined.** The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum, as the same are defined in section 84-1202, shipped or transported into this state from point of origin without this state.

History: En. Sec. 2, Ch. 166, L. 1931; amd. Sec. 2, Ch. 192, L. 1945.

84-1204. (2358) **Quarterly payment of tax.** Such annual license tax, as imposed by section 84-1202, shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th and December 31st, of each year, beginning with the quarter ending March 31, 1945, and the amount of such license tax due for each such quarter shall be paid to the state board of equalization within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 15, Ex. L. 1921; re-en. Sec. 2358, R. C. M. 1921; amd. Sec. 3, Ch. 192, L. 1945.

84-1205. (2359) **Statements to be filed with board of equalization.** Each and every person engaged in or carrying on the business specified in section 84-1202 at the date when this act becomes effective, must, not later than the thirtieth day of April, 1945 and every person who shall, after the date this act becomes effective, engage in such business, must immediately

upon engaging therein, file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants or factories within this state; the name and address of the managing agent in this state; if a corporation, joint-stock company or association, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal place of business and the name and addresses of its principal officers; and such other information as the state board of equalization may deem necessary.

History: En. Sec. 4, Ch. 15, Ex. L. 1921; re-en. Sec. 2359, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1945.

84-1206. (2360) **Manufacturers to keep records.** Every such person shall keep a record in such form as the state board of equalization may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R. C. M. 1921; amd. Sec. 5, Ch. 192, L. 1945.

84-1207. (2361) **Quarterly statement and payment of tax.** Each and every person must, within thirty days after the quarter ending March 31, 1945, and within thirty days after the end of each following quarter, make out, on forms prescribed by the state board of equalization, and deliver to the state board of equalization, a statement showing the total number of barrels or tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in section 84-1202 or imported by such person into the state of Montana for sale or use, during each month of such quarter and during the whole quarter, and such other information as said board may require, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state board of equalization, pay to the state board of equalization the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state, may include all thereof in one statement.

History: En. Sec. 6, Ch. 15, Ex. L. 1921; re-en. Sec. 2361, R. C. M. 1921; amd. Sec. 6, Ch. 192, L. 1945.

Collateral References

Licenses⇨30, 32 (1).
53 C.J.S. Licenses §§ 49, 51.

84-1208. (2362) **Duty to file statement.** It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by section 84-1207 in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 15, Ex. L. 1921; re-en. Sec. 2362, R. C. M. 1921; amd. Sec. 7, Ch. 192, L. 1945.

84-1209. (2363) **Procedure to ascertain tax on failure of statement—penalty.** If any such person shall fail, neglect or refuse to file any statement required by section 84-1207 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may, regarding the amounts of the respective articles or products enumerated in section 84-1202 manufactured or produced by such person within this state or imported by such person into the state, during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state board of equalization, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 8, Ch. 15, Ex. L. 1921; re-en. Sec. 2363, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1945.

References

United States Gypsum Co. v. State Board of Equalization, 116 M 275, 277, 149 P 2d 774.

Collateral References

Licenses⇐41.
53 C.J.S. Licenses § 62.

84-1210. (2364) **Disposal of taxes.** All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 15, Ex. L. 1921; re-en. Sec. 2364, R. C. M. 1921.

Collateral References

Licenses⇐33.
53 C.J.S. Licenses § 56.

84-1211. (2365) **Penalty for violation of act.** Any violation of the provisions of sections 84-1202, 84-1203, 84-1204, 84-1205, 84-1206, 84-1207, 84-1208, 84-1209 or 84-1211, or either or any thereof, shall be deemed a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 15, Ex. L. 1921; re-en. Sec. 2365, R. C. M. 1921; amd. Sec. 9, Ch. 192, L. 1945.

Collateral References

Licenses⇐40.
53 C.J.S. Licenses § 66.

84-1212. (2366) **License tax supplemental.** The license taxes herein provided for shall be in addition to all taxes and fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 15, Ex. L. 1921; re-en. Sec. 2366, R. C. M. 1921.

Collateral References

Licenses⇨28.

53 C.J.S. Licenses § 46.

CHAPTER 13

LICENSE TAXES—COAL MINES

Section 84-1301. "Person" defined.
84-1302. Coal mines license tax—amount—exceptions.
84-1303. Payment of annual license tax.
84-1304. Mine operators to file statements.
84-1305. Records to be kept by mine operators.
84-1306. Quarterly statements of mine operators—payment of license tax.
84-1307. Penalty for neglect or false statement.
84-1308. Procedure to determine tax—penalty—tax lien.
84-1309. Disposal of license taxes.
84-1310. Penalty for violation of act.
84-1311. License taxes supplemental.

84-1301. (2316) **"Person" defined.** The term "person" as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint-stock company and association.

History: En. Sec. 1, Ch. 155, L. 1921; re-en. Sec. 2316, R. C. M. 1921.

84-1302. (2317) **Coal mines license tax—amount—exceptions.** Every person engaged in or carrying on the business of coal mining, or engaged in the business of working or operating any mine or mining property, in the state of Montana, from which marketable or merchantable coal of any kind is mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of marketable or merchantable coal mined, extracted or produced by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any coal mine or coal property or business, to pay such license taxes, nor shall any work required to be done in prospecting for, or in developing, or in opening up any coal mine or mining property, be deemed to be the carrying on of a coal mining business, or the engaging in the business of working or operat-

ing of a coal mine; provided, further, that if during any such work of developing or opening up any coal mine or coal mining property, any marketable or merchantable coal shall be mined, extracted or produced and sold, then the same shall be deemed the carrying on of a coal mining business and the engaging in the business of working and operating a coal mine.

History: En. Sec. 2, Ch. 155, L. 1921; re-en. Sec. 2317, R. C. M. 1921; amd. Sec. 1, Ch. 200, L. 1939.

Tax by Cities

Section 84-1402 requires every coal dealer in the state to pay annually to the state a license of one dollar and in addition thereto five cents per ton for every ton of coal sold by him during any one year upon which the mine license fee exacted by this section has not been paid by the mine operator. Although, under section 11-901, subsection 3, the power of cities or towns to license an industry or business is limited to an amount not to exceed the sum required by the state to be paid to it by the same business, a city ordinance exacting a fee of one dollar from coal dealers, and in addition five cents per ton for every ton of coal sold, without incorporating therein the clause limiting the payment of the five cents to coal upon which the mine license fee exacted by this section had not been paid to the state, was invalid as in excess of the power of the city to impose. State ex rel. City of Butte v. Police Court, 65 M 94, 98, 210 P 1059.

Collateral References

Licenses⊂⊃11 (1), 29.
53 C.J.S. Licenses §§ 30, 48.
33 Am. Jur. 345, Licenses, § 25.

84-1303. (2318) **Payment of annual license tax.** Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 155, L. 1921; re-en. Sec. 2318, R. C. M. 1921.

84-1304. (2319) **Mine operators to file statements.** Each and every person engaged in or carrying on the business of coal mining, or engaged in the business of working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of coal mining or engage in working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, must, immediately upon engaging in such business, work or operations, file with the state board of equalization, a certificate and statement, on forms prescribed by such state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the mine or mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 155, L. 1921; re-en. Sec. 2319, R. C. M. 1921.

Collateral References
Licenses⇐30.
53 C.J.S. Licenses § 49.

84-1305. (2320) **Records to be kept by mine operators.** Every such person shall keep a record, in such form as the state board of equalization may require, of all coal mined, extracted or produced, and of all coal sold or otherwise disposed of by such person, and such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents and employees.

History: En. Sec. 5, Ch. 155, L. 1921; re-en. Sec. 2320, R. C. M. 1921.

84-1306. (2321) **Quarterly statements of mine operators—payment of license tax.** Each and every such person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons, of two thousand pounds each, of marketable or merchantable coal mined, extracted, or produced by such person during such quarter, from all coal mines or coal mining property worked or operated by such person, and shipped by such person, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person, together with the total amount due to the state as license tax for such quarter; and must within such thirty days, and at the time of delivering such duplicate statement to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana, for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state, of the association, joint-stock company, or corporation making the same. Any person engaged in working or operating more than one coal mine may include all coal mines worked or operated by him in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 155, L. 1921; re-en. Sec. 2321, R. C. M. 1921.

84-1307. (2322) **Penalty for neglect or false statement.** It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 155, L. 1921; re-en. Sec. 2322, R. C. M. 1921.

84-1308. (2323) **Procedure to determine tax—penalty—tax lien.** If any person shall fail, neglect or refuse to file any statement required by section 84-1306, or shall fail to make payment of such license tax within the

time therein required, the state board of equalization, shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement in triplicate, showing the same, and shall add to the amount of such license taxes, ten per centum (10%) thereof as a penalty, and one of such statements shall be filed in the office of the county clerk and recorder of the county in which the coal was produced and one of such statements delivered to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of eight per centum (8%) per annum from the date of making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general or any county attorney to commence, and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

The license tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and upon the mine from which the coal was produced, which lien shall attach on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 8, Ch. 155, L. 1921; re-en. Sec. 2323, R. C. M. 1921; amd. Sec. 1, Ch. 74, L. 1931; amd. Sec. 2, Ch. 200, L. 1939.

Collateral References
Licenses⇨30, 31, 41.
53 C.J.S. Licenses §§ 49, 50, 62.

84-1309. (2324) **Disposal of license taxes.** All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 155, L. 1921; re-en. Sec. 2324, R. C. M. 1921.

Collateral References
Licenses⇨33.
53 C.J.S. Licenses § 56.

84-1310. (2325) **Penalty for violation of act.** Any violation of any of the provisions of the act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 155, L. 1921; re-en. Sec. 2325, R. C. M. 1921.

Collateral References
Licenses⇨40.
53 C.J.S. Licenses § 66.

84-1311. (2326) **License taxes supplemental.** The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1921; re-en. Sec. 2326, R. C. M. 1921.

Collateral References
Licenses⇨28.
53 C.J.S. Licenses § 46.

CHAPTER 14

LICENSE TAXES—COAL RETAILERS

Section 84-1401. "Person" and "mine operator" defined.
84-1402. License to retail coal—fees.
84-1403. Retailers to file statements—contents.
84-1404. Payment of license fees.
84-1405. Record of coal sold for retail.
84-1406. Statement of coal sold—form and filing.
84-1407. Penalty for failure to file statement.
84-1408. Procedure to determine tax on failure to file statement—penalty.
84-1409. Expiration of license.
84-1410. Full weight of coal.
84-1411. Misrepresentation in sale forbidden.
84-1412. Revocation of license.
84-1413. Invoice of coal.
84-1414. State treasurer to issue license.
84-1415. Disposal of license fees.
84-1416. Penalty for violation of act.
84-1417. Fees additional to other taxes.

84-1401. (2327) **"Person" and "mine operator" defined.** The term "person," as used in this act means and includes every individual, firm, association, joint-stock company, syndicate, and corporation; and the term "mine operator" as used in this act means every person who engages in the business in this state of working or operating any mine or mining property from which coal of any kind is mined, extracted or produced, whether such person shall engage in such business as owner, lessee, trustee, receiver, or in any other capacity, but shall not mean or include a laborer or employee employed to work in or about any such mine or mining property.

History: En. Sec. 1, Ch. 3, Ex. L. 1921; re-en. Sec. 2327, R. C. M. 1921.

Collateral References
Licenses⇨15 (1).
53 C.J.S. Licenses § 30.

84-1402. (2328) **License to retail coal—fees.** Every person who engages in or carries on the occupation or business in this state of retailing, or selling at retail, coal of any kind must, for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a fee of one dollar, together with an additional sum or amount equal to five cents a ton for each and every ton of coal containing two thousand pounds sold by such person during such year and for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state.

History: En. Sec. 2, Ch. 3, Ex. L. 1921; re-en. Sec. 2328, R. C. M. 1921.

Cross-Reference
Coal mines license tax, amount, sec. 84-1302.

References

State ex rel. City of Butte v. Police Court, 65 M 94, 210 P 1059.

Collateral References

Licenses⇨15 (1), 29.
53 C.J.S. Licenses §§ 30, 48.
33 Am. Jur. 362, Licenses, § 36.

84-1403. (2329) **Retailers to file statements—Contents.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate, or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state board of equalization may require.

History: En. Sec. 3, Ch. 3, Ex. L. 1921; re-en. Sec. 2329, R. C. M. 1921.

84-1404. (2330) **Payment of license fees.** The said license fee of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional license fee of five cents per ton shall be paid in quarterly installments for the quarters ending March 31st, June 30th, September 30th and December 31st in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license fees becoming due for any quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 3, Ex. L. 1921; re-en. Sec. 2330, R. C. M. 1921.

References

State ex rel. City of Butte v. Police Court, 65 M 94, 99, 210 P 1059.

Collateral References

Licenses⇨32 (1).
53 C.J.S. Licenses § 51.

84-1405. (2331) **Record of coal sold for retail.** Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents, or employees.

History: En. Sec. 5, Ch. 3, Ex. L. 1921; re-en. Sec. 2331, R. C. M. 1921.

Collateral References
Licenses⇨30.
53 C.J.S. Licenses § 49.

84-1406. (2332) **Statement of coal sold—form and filing.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license fees from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license fees shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 3, Ex. L. 1921; re-en. Sec. 2332, R. C. M. 1921.

84-1407. (2333) **Penalty for failure to file statement.** It shall be unlawful for any person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time required, or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 3, Ex. L. 1921; re-en. Sec. 2333, R. C. M. 1921.

84-1408. (2334) **Procedure to determine tax on failure to file statement—penalty.** If any person shall fail, neglect, or refuse to make or file the statement required by section 84-1406, or shall fail to make payment of such license tax within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license fees due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license fees, and shall add to the amount of such license fees twenty-five per centum (25%) thereof as a penalty, and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license fees, with the penalty added thereto, and interest on the whole thereof at the rate of eight per centum (8%) per annum from the date of the making of such statement by the state board of equalization until paid. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 3, Ex. L. 1921; re-en. Sec. 2334, R. C. M. 1921; amd. Sec. 2, Ch. 74, L. 1931.

Collateral References
Licenses⇨30, 41.
53 C.J.S. Licenses §§ 49, 52.

84-1409. (2335) **Expiration of license.** All licenses issued under the provisions of this act shall expire on the 31st day of December following the date of issuance.

History: En. Sec. 9, Ch. 3, Ex. L. 1921; re-en. Sec. 2335, R. C. M. 1921.

Collateral References
Licenses⇨38.
53 C.J.S. Licenses § 43.

84-1410. (2336) **Full weight of coal.** In all sales of coal the person selling the same must give to the purchaser full weight at the rate of two thousand pounds to the ton.

History: En. Sec. 10, Ch. 3, Ex. L. 1921; re-en. Sec. 2336, R. C. M. 1921.

Collateral References
Weights and Measures⇨5.
94 C.J.S. Weights and Measures § 4.

Cross-Reference
Full weight required, secs. 50-603, 94-1904.

84-1411. (2337) **Misrepresentation in sale forbidden.** No person, association, firm, joint-stock company, syndicate or corporation shall misrepresent to the public respecting any coal offered for sale, nor sell coal of any particular name or from any particular mine under the name or designation of another coal or mine.

History: En. Sec. 11, Ch. 3, Ex. L. 1921; re-en. Sec. 2337, R. C. M. 1921.

Collateral References
Sales⇨48¾.
77 C.J.S. Sales § 3.

84-1412. (2338) **Revocation of license.** The state board of equalization shall have the power to revoke the license of any person upon the conviction of such person of the violation of any of the provisions contained in the two preceding sections, but no revocation shall be made until due notice of the intention of the state board of equalization so to do shall have been given to such person and such person afforded an opportunity to appear before such state board of equalization and show cause why such license should not be revoked.

History: En. Sec. 12, Ch. 3, Ex. L. 1921; re-en. Sec. 2338, R. C. M. 1921.

Collateral References
Licenses⇨38.
53 C.J.S. Licenses § 44.

84-1413. (2339) **Invoice of coal.** Every "mine operator" shall make out and deliver to every person to whom any coal is sold or delivered by such "mine operator" an invoice covering the coal so sold or delivered, on which invoice shall be stated whether or not such "mine operator" has paid, or assumes liability for the payment of the license fee for mining the same, to the state of Montana, under any law of this state.

History: En. Sec. 13, Ch. 3, Ex. L. 1921; re-en. Sec. 2339, R. C. M. 1921.

84-1414. (2340) **State treasurer to issue license.** Upon payment of the license fee for the first quarter in each year by any person engaging in or

carrying on the occupation of selling coal at retail in this state, the state treasurer shall issue to the person paying the same a license which shall recite therein that the same shall be and remain in full force and effect for the whole of such year, provided the person to whom it is issued shall thereafter make all payments of quarterly installments of license fees as the same may become due, and such license shall be kept conspicuously posted in the place of business of such person.

History: En. Sec. 14, Ch. 3, Ex. L. 1921; re-en. Sec. 2340, R. C. M. 1921.

Collateral References
Licenses⇐23.
53 C.J.S. Licenses § 40.

84-1415. (2341) **Disposal of license fees.** All license fees collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 15, Ch. 3, Ex. L. 1921; re-en. Sec. 2341, R. C. M. 1921.

Collateral References
Licenses⇐33.
53 C.J.S. Licenses § 56.

84-1416. (2342) **Penalty for violation of act.** Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 3, Ex. L. 1921; re-en. Sec. 2342, R. C. M. 1921.

Collateral References
Licenses⇐40.
53 C.J.S. Licenses § 66.

84-1417. (2343) **Fees additional to other taxes.** The license fees herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 17, Ch. 3, Ex. L. 1921; re-en. Sec. 2343, R. C. M. 1921.

Collateral References
Licenses⇐28.
53 C.J.S. Licenses § 46.

CHAPTER 15

LICENSE TAXES—CORPORATION LICENSE TAX

Section 84-1501. Corporation license tax—organizations exempt therefrom.
84-1501.1. Definitions.
84-1501.2. Election by small business corporation.
84-1501.3. Small business option unavailable on dissolution—exception.
84-1502. Deductions allowed in computing income.
84-1503. Segregation of income within and without state.
84-1504. Computation of license tax—return of net income to be filed.
84-1505. Assessment and collection of tax.
84-1506. Penalty for refusal to make return or rendering false or fraudulent return.
84-1507. Returns and corrections to be public records.
84-1508. Regulations—attendance of witnesses—arbitrary assignment of net income.
84-1508.1. Determination of tax liability—interest on deficiencies and overpayments.
84-1508.2. Periods of limitation—waiver.
84-1509. Consolidated returns—computation and procedure on.
84-1510. Reports upon merger of corporations—payment of tax.

84-1511. Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy.
84-1512. Where omission deemed committed—certificate of board as evidence.
84-1513. Action in case of false or fraudulent returns.
84-1514. Delinquency—suspension—forfeiture—dissolution.
84-1515. Reviver of corporation after suspension or forfeiture.
84-1516. Penalty for violation of act.
84-1517. Failure to make return—estimate and investigation of net income.
84-1518. Reciprocity with federal and other states' revenue officers regarding returns.
84-1519. Repealing and saving clause.

84-1501. (2296) **Corporation license tax—organizations exempt therefrom.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be five and one-quarter per centum (5¼%) of all net income for the taxable period, provided however, that as to all taxable periods ending on or after February 28, 1967, whether on a calendar or fiscal year basis, the percentage of net income to be paid under this act shall be four and one-half per centum (4½%). Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than ten dollars ($10).

There shall not be taxed under this title any income received by any—

(a). Labor, agricultural or horticultural organization;

(b). Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c). Cemetery company owned and operated exclusively for the benefit of its members;

(d). Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e). Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f). Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g). Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h). Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i). Any co-operative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a co-operative basis;

(j). Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k). In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; reen. Sec. 2296 R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965.

Cross-Reference

Rural electric co-operatives exempt from excise taxes, sec. 14-528.

Building and Loan Associations

Dividends paid by building and loan associations are deductible from gross income in determining corporation license taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 314.

Church Society Engaged in Agriculture

A corporation described as an international church society which devotes itself to farming, stock growing, and all other branches of agriculture, in which members live communal lives in colonies, which is devoted exclusively to agricultural pursuits for the livelihood of its members, and in which income is used to provide for the needs of its members and for the acquisition of additional property, is not exempt from the corporation license tax on the basis of the exemption granted to corporations organized exclusively for religious purposes or the exemption to corporations exclusively organized for holding title to and collecting income from property, or under the exemption granted to labor, agricultural or horticultural organizations. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

Construction

There is no conflict between this section and sections 7-122 and 7-159, since they deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

Co-operative Corporations

Co-operative corporations doing business in Montana and subject to corporation license tax may exclude or deduct from gross income any amounts paid as patronage dividends. Fulton v. Farmers Union Grain Terminal Assn., 140 M 523, 374 P 2d 231, 237.

Deduction of Refund to Government

Where a government contractor's liability to make a refund to the government was certain under the laws relating to renegotiation, the estimated amount of the contractor's liability thereunder was an allowable deduction as an expense in-

curred in computing the state corporation license tax of the contractor on the accrual basis although the exact amount was not known nor presently due during the taxable year but such amount was determined later and the adjustment made. Birch & Sons Constr. Co. v. Porter, 117 M 232, 236, 157 P 2d 777.

Income from Lease on Indian Land

A corporation extracting oil from lands within the Blackfeet Indian reservation under lease given by the tribe, was subject to the payment of corporation license tax. British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 302, 54 P 2d 129, affirmed 299 U S 159, 81 L Ed 95, 57 S Ct 132. See also Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 290, 54 P 2d 117.

Interest on United States Obligations

Interest on the obligations of the United States must be included in computing the corporate license tax since the United States is a "resident" within the meaning of the provision fixing the tax at a percentage of the net income received "from all sources within the state." Montana Bank v. Casey, 135 M 104, 337 P 2d 935.

Livestock Production Credit Association

Where "Class A" stock which had been federally owned was retired and control of production credit association passed completely into the hands of individual stockholders, then the association ceased to be an instrumentality of the United States as provided under 12 U.S.C. section 1138c, and became subject to the state corporation license tax. Montana Livestock Production Credit Assn. v. State, 143 M 578, 393 P 2d 50.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090; Cottonwood Coal Co. v. Junod, 73 M 392, 395, 236 P 1080; O'Connell v. State Board of Equalization, 95 M 91, 136, 25 P 2d 114; State v. J. C. Maguire Constr. Co., 113 M 324, 328, 125 P 2d 433; State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

Collateral References

Taxation⇐117.

84 C.J.S. Taxation § 134.

27 Am. Jur. 399 et seq., Income Taxes, § 161 et seq.

DECISIONS UNDER FORMER LAW

Constitutionality

Laws 1917, ch. 79 was not unconstitutional because of alleged discrimination between corporations whose business is and those whose business is not wholly within this state, such discrimination being necessary to attain reasonable equality of burdens between the two. Equitable Life Assurance Co. v. Hart, 55 M 76, 89, 173 P 1062.

Insurance Corporations

The purpose of Laws 1917, ch. 79 being the imposition of a license fee of 1 per cent upon the net income of every corporation in the state for the privilege of doing business as such, without regard to the character of the business, insurance corporations were intended to be within its purview. Equitable Life Assurance Co. v. Hart, 55 M 76, 84, 173 P 1062.

Laws 1917, ch. 79 did not operate to repeal section 40-1302 (since repealed), requiring insurance corporations to pay certain license fees before commencing to do business in this state. Equitable Life Assurance Co. v. Hart, 55 M 76, 84, 173 P 1062.

The license fee required of insurance corporations by Laws 1917, ch. 79 and section 40-1302 (since repealed) do not constitute a case of double taxation, the impositions, though upon the same persons, not being for the same thing. Equitable Life Assurance Co. v. Hart, 55 M 76, 84, 173 P 1062.

Interest-bearing Obligations of Nonresidents.

The provisions of section 2296, R. C. M. 1921, by imposing the tax upon the net income received by domestic insurance company "from all sources, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise" of the state, excluded interest accruing on obligations of nonresidents. Montana Life Ins. Co. v. Shannon, 106 M 500, 504, 78 P 2d 946.

84-1501.1. Definitions. (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

(1) have more than ten (10) shareholders;

(2) have as a shareholder a person (other than an estate) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

(b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under this act, in effect for such taxable year.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959.

Compiler's Note

A preliminary clause of this act read as follows: "Chapter 15 of Title 84 of the Revised Codes of Montana, 1947, is amended by addition of a new section entitled, 'Election of Certain Small Business Corporations as to Taxable Status' and numbered 84-1501.1, as follows:" Then sections 1 and 2 were set out in the chapter. Section 1 was entitled "Definitions" while section 2 was entitled "Election by Small Business Corporation."

84-1501.2. Election by small business corporation. (a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation—

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day,

consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then—

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the state board of equalization shall prescribe by regulations.

(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—

(A) within the 90-day period beginning on the day after the date of the enactment of this subchapter, or

(B) if its taxable year ends within such 90-day period, before the close of such taxable year.

An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.

(d) Years for which effective. An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e).

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) on the day on which the election is made, if such election is made after such first day,

becomes a shareholder in such corporation and does not consent to such election within such time as the state board of equalization shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year.

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the state board of equalization shall prescribe by regulations.

(3) Ceases to be small business corporation. An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day,

the corporation ceases to be a small business corporation (as defined in this act). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the state board of equalization consents to such election.

(g) This election shall not be effective unless the corporate net income or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in section 84-4905.

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars ($10.00) required by section 1501 [84-1501].

History: Sec. 2, Ch. 122, L. 1959.

Compiler's Note

The compiler has inserted the bracketed reference to 84-1501 in subsection (h).

84-1501.3. Small business option unavailable on dissolution—exception. In the case of corporation dissolution no benefits may be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders, unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.

History: En. Sec. 2, Ch. 60, L. 1963.

84-1502. (2297) **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made

to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the state board of equalization; provided, however, for the purpose of determining depletion, depreciation and obsolescence, in all cases not expressly provided for in this act, the provisions of the most recent act of Congress of the United States, commonly known as the Federal Income Tax Act, and the rules, regulations and decisions thereunder, in so far as the same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state board of equalization.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Taxes paid within the year except not to include the following:

(a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income of profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

6. In the case of insurance companies, in addition to the above, the net addition required by law to be made within the year to reserve funds, and paid within the year on policy and annuity contracts.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959.

Accounting Methods

Keeping accounts and making returns on the accrual basis, as distinguished from cash basis import that it is the right to receive and not the actual receipt that determines inclusion of the amount in gross income. Birch & Sons Constr. Co. v. Porter, 117 M 232, 236, 157 P 777.

Deduction of Refund to Government

Where a government contractor's liability to make a refund to the government was certain under the laws relating to renegotiation, the estimated amount of the contractor's liability thereunder was an allowable deduction as an expense incurred in computing the state corporation license tax of the contractor on the accrual basis although the exact amount was not known nor presently due during the taxable year but such amount was determined later and the adjustment made. Birch & Sons Constr. Co. v. Porter, 117 M 232, 236, 157 P 2d 777.

Deductions and Expense Allowed Co-operatives

Dividends paid on capital stock outstanding are not a proper deduction in determining the net income of a co-operative association organized under sections 14-201 et seq., for taxation purposes, such dividends being neither an expense nor a payment of interest on indebtedness, but patronage dividends which it must pay under section 14-213 in apportioning its earnings, are in effect refunds or rebates

to customers whether stockholders or not, and are to be treated as a necessary expense in computing net income upon which to pay a license tax. Gallatin Farmers Co. v. Shannon, 109 M 155, 158, 93 P 2d 953.

References

Equitable Life Assurance Co. v. Hart, 55 M 76, 81, 173 P 1062; East Helena State Bank v. Rogers, 73 M 210, 213 et seq., 236 P 1090.

Collateral References

Taxation⇨376 (1).

84 C.J.S. Taxation §§ 138, 445.

Income of subsidiary as taxable to it or to parent corporation. 10 ALR 2d 576.

Inclusion of investments in stock of other corporations in fixing base for taxation of corporation, as double taxation. 11 ALR 2d 323.

DECISIONS UNDER FORMER LAW

Doing Business in State

A Minnesota corporation engaged in the coal mining business in Montana was entitled to certain deductions under section 2297, R. C. M. 1921, although it maintained its general office in Minneapolis, where the meetings of the stockholders and directors were held and from where the business was directed, to which office moneys were sent for deposit and where it received interest and dividends from invested funds and disbursed same to its stockholders. The state treasurer was in error in claiming that the corporation, by reason of the above facts, was partly engaged in business in Montana and partly in Minnesota, and therefore subject to a higher fee. Cottonwood Coal Co. v. Junod, 73 M 392, 395, 236 P 1080.

84-1503. (2297.1) **Segregation of income within and without state.** If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state board of equalization shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The board shall publish not less than once a year, all rules and regulations pertaining to this section. All decisions by the board under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer cannot change from one method of accounting to another method of accounting without first obtaining permission from the board.

History: En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957.

Inapplicable if Gross Business within the State Not Determined

This section did not apply to an action to recover taxes paid by a domestic corporation where controversy was whether interest on obligations of nonresidents, collected outside the state and forwarded to the principal office in Montana should be considered as income within the state, since, until the interest payments had been determined to be income within or without the state, the gross business within and without the state could not be established, and until these two factors were known, the method of segregation provided by the statute could not be applied. Montana Life Ins. Co. v. Shannon, 106 M 500, 504, 78 P 2d 946.

Collateral References

Taxation⇨121.

84 C.J.S. Taxation § 138.

27 Am. Jur. 414, Income Taxes, § 139 et seq.

Computation of income tax on nonresident or foreign corporation. 90 ALR 484 and 156 ALR 1370.

Constitutionality of discrimination between domestic corporations as regards taxation based on fact whether their business is wholly within state, or wholly out of state, or partially within and partially without. 122 ALR 983.

State taxation in respect of business of nonresidents and of foreign corporations carried on both within and without the state. 130 ALR 1183.

84-1504. (2299) **Computation of license tax—return of net income to be filed.** (1) The license fee shall be computed upon the total net income of the corporation received within each preceding calendar year ending December 31; provided, that any corporation subject to this license fee may designate the last day of any month in the year as the day of the close of its fiscal year, and shall be entitled to have the license fee payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment, instead of upon the basis of the net income for the calendar year preceding the date of assessment, and it shall give notice to the state board of equalization of the day it has thus designated as the close of its fiscal year, at any time not less than thirty (30) days prior to the time its return would be filed if made upon the basis of the calendar year.

(2) Every corporation, subject to the license fee herein imposed, shall for each year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, render a true and accurate return of its annual net income in the manner and form to be prescribed by the state board of equalization, and containing such facts, data and information as are appropriate and in the opinion of the state board of equalization necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by the president, vice-president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the state board of equalization on or before the fifteenth day of May in each year, and if reporting on a fiscal year basis the return shall be filed with said board on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the board of equalization shall prescribe. The board of equalization may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The term gross income means the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability; but shall include interest exempt from federal income tax. The term "net income" means the gross income of the corporation less the allowable deductions. However, the definitions of gross income and net income set forth in this section shall not be construed as allowing the deductions set forth in section 243 of the Federal Internal Revenue Code as now written, or as that section shall be labeled or amended. The term "fiscal year" means an accounting period of twelve (12) months ending on the last day of any month other than December.

(3) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1923; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963.

Compiler's Note

Section 243 of the Federal Internal Revenue Code, referred to in subsection (2) of this section, is compiled in the United States Code as Tit. 26, sec. 243.

Co-operative Corporations

Amounts paid as patronage dividends by co-operative corporations doing business in Montana may be excluded or deducted from gross income in computing corporation license tax. Fulton v. Farmers Union Grain Terminal Assn., 140 M 523, 374 P 2d 231, 237.

Power of Corporation Failing to Comply

The fact that corporation does not comply with this section and has ceased to do business does not prevent it from redeeming its property sold at delinquent tax sale. Stensvad v. Ottman, 123 M 158, 208 P 2d 507, 512.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090; Cottonwood Coal Co. v. Junod, 73 M 392, 395, 236 P 1080; State v. J. C. Maguire Constr. Co., 113 M 324, 335, 125 P 2d 433; Birch & Sons Constr. Co. v. Porter, 117 M 232, 236, 157 P 2d 777.

Collateral References

Taxation⊂121.

84 C.J.S. Taxation, § 138.

27 Am. Jur. 430, Income Taxes, § 218 et seq.

Dividend in kind or stock dividend as affecting corporation's income tax. 7 ALR 2d 750.

84-1505. (2300) **Assessment and collection of tax.** (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state board of equalization on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of six per cent (6%) per annum from the due date until paid.

(2) Levy upon and sale of property for payment of corporation licenses taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the board and pay to it the money collected by virtue thereof by a time to

be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the board a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the board shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

(3) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the board, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090.

DECISIONS UNDER FORMER LAW

Limitation on Action of Board

Under this section (prior to the 1963 amendment), the board of equalization was limited to going back no more than five years to recover corporation license taxes alleged to be due. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

84-1506. (2301) **Penalty for refusal to make return or rendering false or fraudulent return.** If any corporation shall refuse or neglect to make a return at the time hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation shall be liable to a penalty of not exceeding five thousand dollars, and may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state of Montana as such corporation until the license fee, together with all penalties and costs, shall be paid, which forfeiture may be enforced by the attorney general by proper proceedings in court.

History: En. Sec. 6, Ch. 79, L. 1917; re-en. Sec. 2301, R. C. M. 1921.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090.

Collateral References

Taxation⇐838, 839.
85 C.J.S. Taxation §§ 1025, 1026.

Constitutionality, construction and effect of specific provisions of state corporate income tax law to prevent tax evasion. 92 ALR 1073.

84-1507. (2302) **Returns and corrections to be public records.** When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state board of equalization, shall be filed in the office of said board, and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state board of equalization.

History: En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R. C. M. 1921; amd. Sec. 3, Ch. 146, L. 1923.

Cross-Reference

Certified copies of returns, secs. 84-732 to 84-735.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090.

84-1508. (2303) **Regulations—attendance of witnesses—arbitrary assignment of net income.** The state board of equalization shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state board of equalization, together with the production of books and such other testimony by appropriate process. When the state board of equalization has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the board shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R. C. M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; amd. Sec. 5, Ch. 186, L. 1963.

Regulations of Board

Since the board of equalization has power, under this section, to prescribe regulations for enforcement of the chapter, a writ of prohibition issued by a district court is improper as a means of reviewing the regulations on the merits. State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090.

84-1508.1. Determination of tax liability—interest on deficiencies and overpayments. (a) Deficiency assessments. If, the state board of equalization determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the ad-

ditional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state board of equalization a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state board of equalization shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state board of equalization's action upon the protest is final when it mails notice of its action to the taxpayer.

When a deficiency is determined and the tax becomes final, the state board of equalization shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in section 84-1505 for payment of the tax. A certificate by the state board of equalization of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

(b) Overpayment of tax—refunds and credits. If the state board of equalization determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

If the state board of equalization disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of the notice, the state board of equalization's action shall become final, unless within the said thirty (30) day period the taxpayer appeals in writing from the action of said board. If such appeal is made, the state board of equalization shall reconsider its action, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented in the event of an oral hearing, the state board of equalization shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment

is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar ($1.00).

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963.

84-1508.2. Periods of limitation—waiver. (1) Except as otherwise provided in section 84-1513, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on that day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state board of equalization may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963.

84-1509. (2303.1) **Consolidated returns—computation and procedure on.** (a) Corporations which are affiliated may, if authorized, and shall, if required, by the state board of equalization, under regulations prescribed by said board, make a consolidated return for the purpose of this act. In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of any such agreement, then on the basis of the net income properly assignable to each.

(b) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, substantially all of the capital stock of another corporation, or of other corporations, may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corpora-

tion liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the state board of equalization that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state board of equalization is authorized and empowered, in such manner as it may determine, to equitably adjust the tax.

History: En. Sec. 5, Ch. 166, L. 1933.

84-1510. (2303.2) **Reports upon merger of corporations—payment of tax.** If any corporation shall acquire either directly, indirectly or by merger or consolidation the major portion of the actively employed assets of another corporation or of corporations doing any business in this state during any year, or shall merge or consolidate another corporation, it shall, within thirty (30) days after such acquisition, merger or consolidation, file a report and include therein a statement showing its own and the consolidated entire net income of all such corporations for preceding calendar or fiscal years to the extent that all such income has not been used or included in measuring a corporation excise tax to this state. It shall, in any event, be liable for and pay all taxes that would have been due and payable by the corporation, or corporations, on or before the first day of January next succeeding had the corporation or corporations whose assets were acquired, or which were merged or consolidated, continued in business and as though there had been no interruption or change of the business thereof nor discontinuance of the privilege of doing business. It shall also include in its own next annual return, in addition to its own entire net income, so much of the entire net income of corporations whose assets it acquired, or which were merged or consolidated, as shall not have been used or included in measuring a corporation excise tax to this state, and shall be taxed upon such combined entire net income for the year to ensue.

History: En. Sec. 6, Ch. 166, L. 1933.

84-1511. (2303.3) **Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy.** (1) It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Therefore, every corporation which shall be dissolved or cease to do business in Montana at any time during any year, shall, before such

dissolution or cessation of business, make a return and pay the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in section 84-1501, in addition to all other corporation license taxes for which such corporation may then be liable.

History: En. Sec. 7, Ch. 166, L. 1933; amd. Sec. 1, Ch. 67, L. 1943; amd. Sec. 1, Ch. 60, L. 1963.

Cross-Reference

Clearance certificates, secs. 84-733 to 84-735.

Construction

Where foreign corporation engaged in business in the state from April, 1934, continuously until December, 1937, when it ceased doing business, having paid the corporation license tax fee in 1935, 1936 and 1937, refusing to pay in 1938, upon demand, on the ground that its 1937 payment was for 1937, state erroneously contended the 1937 payment was for 1936 since, under this section (before amendment), the tax is an excise or license and not an income tax, the tax paid in 1937 being for the year 1937 measured by the company's business done in 1936, and not having done any business in 1938 it owed nothing to the state. State v. J. C. Maguire Constr. Co., 113 M 324, 330, 125 P 2d 433.

84-1512. (2303.4) **Where omission deemed committed—certificate of board as evidence.** The failure to do any act, required by or under the provisions of this act, shall be deemed an act committed in the office of the state board of equalization in the state capitol building, in Helena, Montana. The certificates of the state board of equalization to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933.

84-1513. (2303.5) **Action in case of false or fraudulent returns.** In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

History: En. Sec. 9, Ch. 166, L. 1933.

Limitation on Action of Board

Under section 84-1505 (prior to 1963 amendment), the board of equalization is limited to going back no more than five years to recover corporation license taxes alleged to be due. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

84-1514. (2303.6) **Delinquency — suspension — forfeiture — dissolution.** If a tax computed and levied hereunder is not paid or if a return is not filed before five o'clock P. M. on the last day of the eleventh month after the date of delinquency the corporate powers, rights and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation it shall thereupon forfeit its rights to do intrastate business in this state. Provided that, if any domestic corporation shall fail, for a period of five consecutive years, to either file a return or to pay the corporation license tax, the state board of equalization shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of sixty (60) days from and after the mailing of such notice, and,

if such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said sixty (60) day period, the state board of equalization shall certify this fact to the secretary of state and upon receipt of such certificate, the said corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

The state board of equalization shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture or dissolution herein provided for shall become effective immediately such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933; amd. Sec. 1, Ch. 94, L. 1947.

References

Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37.

Collateral References

Taxation⇐840.
85 C.J.S. Taxation § 1027.

84-1515. (2303.7) **Reviver of corporation after suspension or forfeiture.** Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state board of equalization showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars ($5.00). In case the application is made in any taxable year other than the taxable year in which the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year in which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars ($5.00) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961.

84-1516. (2303.8) **Penalty for violation of act.** Every officer or employee of any corporation or other person, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be liable to a penalty of not more than one hundred dollars ($100) to be imposed, assessed, and collected by the state board of equalization in the same manner as is provided in this act with regard to delinquent taxes.

History: En. Sec. 12, Ch. 166, L. 1933.

Collateral References
Taxation⇐838.
85 C.J.S. Taxation § 1025.

84-1517. (2303.9) **Failure to make return—estimate and investigation of net income.** (a) If any taxpayer fails to make return as herein required, the state board of equalization is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(b) The state board of equalization, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

History: En. Sec. 13, Ch. 166, L. 1933.

84-1518. (2303.10) **Reciprocity with federal and other states' revenue officers regarding returns.** The state board of equalization under such rules as they may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax on or according to income, to inspect the returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax, or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer, or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

History: En. Sec. 14, Ch. 166, L. 1933.

84-1519. (2303.11) **Repealing and saving clause.** That section 2298 and all acts and parts of acts in conflict herewith are hereby repealed; provided, however, that the repeal or amendment of the sections as amended by this act shall not be construed to relieve or release any corporation from the payment of any license fee which such corporation should have paid under the provisions of such sections before the repeal or amendment thereof by this act, or of any penalty or interest which has heretofore or may hereafter attach to or become due thereon, but all such license fees, penalties and interest shall be fixed and determined under the provisions of such sections as amended, and shall be paid and collected as though such sections had not been amended by this act.

History: En. Sec. 15, Ch. 166, L. 1933.

Collateral References
Taxation⇐113.
84 C.J.S. Taxation § 126.

CHAPTER 16

LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section 84-1601. Electrical energy producers' license tax.
84-1602. Payment of tax—not to be set out on customers' bills.
84-1603. Disposition of revenue—interest on delinquency.
84-1604. Statement of producer—contents—time for filing.
84-1605. Producers' monthly statement of gross sales—inspection of books of producer.
84-1606. Exemptions.
84-1607. Future producers to comply with act.
84-1608. False statements constitute perjury.
84-1609. Penalty for violation—enforcement.

84-1601. (2343.1) **Electrical energy producers' license tax.** That in addition to the license tax now provided by law, each and every individual, firm, partnership, common-law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of August, 1957, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and one-quarter per cent (1¼%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957.

Collateral References
Electricity⇐10.
29 C.J.S. Electricity § 4.
33 Am. Jur. Licenses, p. 332, § 9; p. 345, § 25.

84-1602. (2343.2) **Payment of tax—not to be set out on customers' bills.** Said license tax shall be remitted with the statement and paid on or before the fifteenth (15) day of each month, beginning with the fifteenth (15) day of April, 1934. No bill, statement or account rendered or given any customer by any organization affected by the provisions of this act shall set out or contain, as a separate item, any amount on account or by reason of, the license tax imposed by this act.

History: En. Sec. 2, Ch. 51, Ex. L. 1933.

84-1603. (2343.3) **Disposition of revenue—interest on delinquency.** The state board of equalization shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent and shall bear interest from said due date at the rate of twelve per cent (12%) per annum.

History: En. Sec. 3, Ch. 51, Ex. L. 1933; amd. Sec. 20 (F), Ch. 109, L. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. 14, L. 1941.

84-1604. (2343.4) **Statement of producer—contents—time for filing.** On or before the fifteenth (15) day of April, 1934, every producer referred to in section 84-1601, engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the state board of equalization of the state of Montana, on forms prescribed by the state board of equalization, an acknowledged and verified certificate which shall contain:

(a) The name under which the producer is transacting business within the state;

(b) His or its post-office address and principal place of business within the state;

(c) The address and location of his or its production plants or station in the state of Montana;

(d) The name and address of the managing agent;

(e) The names and addresses of the several persons composing any firm or partnership constituting the producer, and if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its officers, directors, general agent and general manager.

(f) Certified copies of any papers necessary to show that such producer has complied with the laws of the state of Montana in order to transact business in Montana.

History: En. Sec. 4, Ch. 51, Ex. L. 1933.

84-1605. (2343.5) **Producers' monthly statement of gross sales—inspection of books of producer.** That every such producer shall on or before the fifteenth (15) day of each calendar month, beginning with April 15, 1934, and monthly thereafter, render to the state board of equalization of the state of Montana on forms prescribed by the state board of equalization, a statement sworn to by the manager, president, secretary or treasurer, showing the gross proceeds received for or on account of, all sales of electricity and electrical energy for the preceding calendar month. The books and records of such producer shall be subject to inspection by the state board of equalization, its agents or employees, during reasonable hours.

History: En. Sec. 5, Ch. 51, Ex. L. 1933.

84-1606. (2343.6) **Exemptions.** All electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Montana is exempt from the provisions of this act, except in cases where the water so pumped is sold or rented to such irrigated lands; provided, the exemption here given shall accrue to the benefit of the consumer of such electricity and electrical energy. Provided, further, that the full amount of such license tax which would have been due from such producers of electricity and electrical energy, if such exemption had not been made, shall be credited annually for the year in which the exemptions are made, on the power bill of the consumer, by the producer of such electricity and electrical energy, furnishing such power and such producer shall include a statement of the amount of electricity and electrical energy exempted by

this section, furnished by it for the purpose of pumping water for irrigation purposes on lands in the state of Montana, to the state board of equalization as part of the statement required by section 84-1601, together with a statement of credits made on the power bills to the consumers of such electricity and electrical energy for the pumping of water for irrigation to be used on lands in the state of Montana.

History: En. Sec. 6, Ch. 51, Ex. L. 1933.

Cross-Reference

Rural electric co-operatives exempt from excise tax, sec. 14-528.

84-1607. (2343.7) **Future producers to comply with act.** Any producer of electricity or electrical energy referred to in section 84-1601, who shall hereafter engage in the generation, production or manufacture of electricity or electrical energy shall immediately upon purchasing or acquiring the plant or installing equipment therefor, comply with the requirements of this act.

History: En. Sec. 7, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 20, L. 1935.

84-1608. (2343.8) **False statements constitute perjury.** Any person, officer, partner, agent or representative of any producer referred to in section 84-1601, who shall make any false statement, affidavit, certificate, report or statement herein required to be made to the state board of equalization, hereunder, shall be deemed guilty of perjury and upon conviction shall be punished by imprisonment in the state penitentiary for not less than one (1) nor more than fourteen (14) years.

History: En. Sec. 8, Ch. 51, Ex. L. 1933.

84-1609. (2343.9) **Penalty for violation—enforcement.** Any producer, referred to in section 84-1601, who shall violate any of the provisions of this act, or who shall fail to pay the license tax herein provided for, or any part thereof, when due, shall be liable for three (3) times the amount of the unpaid or delinquent tax in a civil action instituted for that purpose in a court of competent jurisdiction, in the name of the state of Montana, and in such suit, upon application of the state, an injunction may be issued without requiring any bond, restraining the defendant from continuing to produce electricity or electrical energy, so long as the tax due hereunder from said defendant remains delinquent.

History: En. Sec. 9, Ch. 51, Ex. L. 1933.

CHAPTER 17

LICENSE TAXES—EXPRESS COMPANIES

Section 84-1701. Definition of express companies.
84-1702. Statements to be filed with state board of equalization.
84-1703. Gross receipts—how ascertained.
84-1704. Procedure in case of failure to make statement.
84-1705. Penalty for failure to make statement—duty of attorney general to institute action.
84-1706. State board of equalization authorized to require production of books.

84-1707. Amount and collection of license tax.
84-1708. Collection of license fee by suit on failure of company to pay.
84-1709. Exemption from payment of other tax.

84-1701. (2305) **Definition of express companies.** That any person or persons, joint-stock association or corporation, wherever organized or incorporated, engaged in the business of conveying to, from, or through this state or any part thereof, money, packages, gold, silver plate, or any articles by express service, as distinguished from the ordinary freight lines of transportation of merchandise and property in this state shall be deemed to be an express company.

History: En. Sec. 1, Ch. 87, L. 1917; re-en. Sec. 2305, R. C. M. 1921.

Collateral References
Taxation⇐142.
84 C.J.S. Taxation § 160.

84-1702. (2306) **Statements to be filed with state board of equalization.** Any express company as defined in the preceding section, doing business in this state, shall annually, between the first and thirtieth day of April, after the approval of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the state board of equalization, a statement in such form as the board may prescribe, containing the following facts:

First. The name of the person or persons, association or corporation;

Second. Under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The name and post-office address of the president, secretary, auditor, treasurer, superintendent and general manager;

Fifth. The name and post-office address of the chief officer or managing agent of the company in this state;

Sixth. The entire receipts (including all sums entered or charged whether actually received or not) for business done by such company within this state, including its proportion of gross receipts for business done by such company within the state in connection with other companies;

Seventh. Such other facts and information as the said board may require in the form of return prescribed by it.

History: En. Sec. 2, Ch. 87, L. 1917; re-en. Sec. 2306, R. C. M. 1921.

Collateral References
Taxation⇐366 et seq.
84 C.J.S. Taxation § 431.

84-1703. (2307) **Gross receipts—how ascertained.** The state board of equalization shall proceed to ascertain and determine on or before the first Monday of August in each year the entire gross receipts of each of said express companies for business done within the state of Montana for the year next preceding the first day of April, and the amount so ascertained by the said board shall be held and deemed to be the gross receipts of such express company for business done within the state of Montana for the year under consideration.

History: En. Sec. 3, Ch. 87, L. 1917; re-en. Sec. 2307, R. C. M. 1921.

84-1704. (2308) **Procedure in case of failure to make statement.** In case of failure or refusal of any express company to make the statement required by law or furnish the board any information required by it, the board shall inform itself as best it may on the matters necessary to be known in order to discharge its duty, and at any time after the meeting of the board and before the gross receipts of any express company for business done within the state are determined, any person, company or corporation interested shall have the right, on written application, to appear before the board and be heard on the matter of such determination. After the determination of the amount of the gross receipts of any express company for business done in the state and before the certification of such amount by such board, the board may, on the application of any person, company or corporation interested, or on its own motion, review and correct its findings in such manner as may seem to it to be just and proper.

History: En. Sec. 4, Ch. 87, L. 1917; re-en. Sec. 2308, R. C. M. 1921.

Collateral References
Taxation⇐373.
84 C.J.S. Taxation § 442.

84-1705. (2309) **Penalty for failure to make statement—duty of attorney general to institute action.** In case any express company shall refuse, fail or neglect to make and file the statement or schedule as provided for in this act, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state and on collection paid into the state treasury to the credit of the general fund of the state. The attorney general, on request of the state board of equalization, shall institute such action against any such person or persons, joint-stock company or corporation so delinquent in any court of competent jurisdiction in this state.

History: En. Sec. 5, Ch. 87, L. 1917; re-en. Sec. 2309, R. C. M. 1921.

Collateral References
Taxation⇐838, 845.
85 C.J.S. Taxation §§ 1025, 1033.

84-1706. (2310) **State board of equalization authorized to require production of books.** The state board of equalization shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent or other officer or employee or agent of any express company engaged in an express company business to attend before the board and bring with him for inspection any books or papers of such company in his possession or under his control and to testify under oath on any matter relating to the organization or business of such express company. Any member of the board is authorized and empowered to administer such oath. Any person who shall refuse to attend before the board when subpoenaed so to do, or shall refuse to bring with him and submit for the inspection of the board any books or papers in his possession, custody or control, or shall refuse to answer any questions put to him by the board affecting the organization or business of the express company under investigation shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars nor less than one hundred dollars.

History: En. Sec. 6, Ch. 87, L. 1917; re-en. Sec. 2310, R. C. M. 1921.

84-1707. (2311) **Amount and collection of license tax.** The state board of equalization shall, on the first Monday of August, annually, enter in a book provided for that purpose the amount of gross receipts of express companies doing business in this state for the year next preceding the first day of April, as determined by the provisions of this act. It shall be the duty of the state treasurer annually to collect from each such express company doing business in this state, a sum in the nature of a license tax to be computed by taking four per centum of the amount fixed by the state board of equalization as the gross receipts of such express company for business done within the state for the year next preceding the first day of April as determined and certified by the state board of equalization; provided, however, that nothing contained in this act shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law. All licenses collected under the provisions of this act shall be accredited to the general fund of the state.

History: En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 2311, R. C. M. 1921.

Collateral References

Taxation⇐550.

84 C.J.S. Taxation § 657.

33 Am. Jur. Licenses, p. 332, § 9; p. 345, § 25; p. 350, § 29; p. 365, § 41 et seq.; 51 Am. Jur. 755, Taxation, § 847.

84-1708. (2312) **Collection of license fee by suit on failure of company to pay.** If any express company fails or refuses to pay the license fee as provided for in this act before the thirtieth day of September annually, the state treasurer shall proceed to collect the taxes, together with interest, at the rate of twelve per cent per annum by suit instituted by the attorney general, whose duty it shall be to prosecute any and all proceedings for the collection of such taxes.

History: En. Sec. 8, Ch. 87, L. 1917; re-en. Sec. 2312, R. C. M. 1921.

Collateral References

Taxation⇐583 et seq.

84 C.J.S. Taxation § 697.

84-1709. (2313) **Exemption from payment of other tax.** No other license or franchise tax shall be levied against any express company except the license tax provided by this act.

History: En. Sec. 9, Ch. 87, L. 1917; re-en. Sec. 2313, R. C. M. 1921.

CHAPTER 18

LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section 84-1801. Definitions.
84-1801.1. Gasoline license tax—amount—evaporation and other loss.
84-1802. Dealers' statements—amount of tax—gasoline tax exemption certificates.
84-1802.1. Payment or credit of gasoline tax in event of change in rate of said tax.
84-1803. Rules and regulations to be established by state board.
84-1803.1. Enforcement powers of board.
84-1804. Delinquent penalty and interest.
84-1805. Records to be kept by dealers.

84-1805.1. Records maintained by local governmental agencies issuing exemption certificates.
84-1806. Penalty for failure to file statements.
84-1807. Procedure in case of failure to file statement or pay tax—lien of tax.
84-1808. Inspection of records.
84-1809. Invoice of dealers.
84-1810. Exported gasoline not included in computation of tax.
84-1811. Reports of carriers.
84-1812. Repealed.
84-1813. Tax to be collected on motor fuel, when.
84-1814. Delinquency as misdemeanor—penalty.
84-1815 to 84-1817. Repealed.
84-1818. Refund of gasoline license tax—procedure.
84-1818.1. Date of mailing deemed date of filing or receipt—timely mailing bars penalties and tolls—statutory time limitations.
84-1819. Penalty for false statements, unlawfully obtaining refunds, or unlawful use of gasoline tax exemption certificates.
84-1820. License and bond of gasoline dealers and distributors.
84-1821. Revocation of license on failure to file statements or pay tax.
84-1822. Violation of act a misdemeanor.
84-1823. Definition of "gasoline dealer."
84-1824 to 84-1827. Repealed.
84-1828. Other terms defined.
84-1829. Existing statutes not affected by this act.
84-1830. Title.
84-1831. Definitions.
84-1832. Tax imposed.
84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
84-1834. Special fuel dealers' and special fuel users' records.
84-1835. Monthly returns and payments.
84-1836. Credits.
84-1837. Procedures for credits.
84-1838. Administration.
84-1839. Violations and penalties.
84-1840. Disposition of funds.
84-1841. Judicial review and appeals.
84-1842. Temporary permits to unlicensed users of special fuel vehicles—agents by whom issued.
84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms.
84-1844. Penalty for operation without temporary permit—compliance bonds.

COMMISSIONER'S NOTE.—Sections 2381.1 to 2381.10, inclusive, R. C. M. 1935, the Highway Anticipation Debenture Act of 1931, are omitted from this codification since the debentures authorized by said act have been retired. Initiative No. 41, the Highway Anticipation Debenture Act of 1938, as amended by Ch. 30, Laws 1939 and by Sec. 1, Ch. 79, Laws 1943 is also omitted. The three million dollars of debentures authorized by said act have been issued and are subject to call at any time after 1944. By Sec. 7, Ch. 39, Laws 1945, the State Highway Treasury Anticipation Debenture Act of 1945, the first funds received from the sale of debentures under that act are pledged for the redemption of the outstanding debentures issued under said Initiative No. 41 as amended, and the state treasurer is directed to call them for payment. Inclusion of said Initiative No. 41 in the laws of a permanent nature therefore seems unnecessary. Also see note at beginning of Title 79.

84-1801. (2381.11) **Definitions.** As used in this act, the following definitions shall apply:

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines.

The term "gasoline" does not include special fuels as defined in section 84-1831 (e).

(2) The word "person" means any person, firm, association, joint-stock company, syndicate or corporation.

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state.

(6) The word "handle" means to produce, refine, manufacture or compound gasoline for sale or use; or to import gasoline into the state of Montana or to purchase gasoline within the state of Montana for sale or for use, upon which the license tax herein imposed has not been paid.

(7) The word "dealer" means and includes any person who engages in the business in the state of Montana of producing, refining, manufacturing or compounding gasoline for sale or use; or of importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or use. Such gasoline, for the purpose of this act, shall be deemed to be "handled" by such dealer.

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

History: En. Sec. 1, Ch. 19, L. 1927; amd. Sec. 1, Ch. 170, L. 1933; amd. Sec. 1, Ch. 116, L. 1935; amd. Sec. 1, Ch. 52, L. 1951; amd. Sec. 1, Ch. 17, L. 1955; amd. Sec. 3, Ch. 70, L. 1963.

Cross-Reference

Aviation gas, distribution of tax, sec. 1-501.

Use of Funds Collected under This Act

The fact that a road is a part of the federal forest road does not deprive the highway commission of authority of expending any portion of the gasoline license tax funds derived under this act, in matching funds provided by the Federal Aid Act. State ex rel. Mineral County v. State Highway Commission, 82 M 63, 66 et seq., 265 P 1.

References

State v. Yale Oil Corp. of South Dakota, 88 M 506, 512, 295 P 255; State ex rel. Diederichs v. State Highway Commission, 89 M 205, 208, 296 P 1033; Arps v. State Highway Commission, 90 M 152, 157, 300 P 549.

Collateral References

Licenses⇦16 (9), 29.

53 C.J.S. Licenses §§ 30, 48.

33 Am. Jur. 358, Licenses, § 34; 51 Am. Jur. 1073, Taxation, § 1260 et seq.

Constitutionality and construction of gasoline tax statute. 47 ALR 980; 84 ALR 839 and 111 ALR 185.

84-1801.1. Gasoline license tax—amount—evaporation and other loss. Beginning January 16, 1958, every dealer (as defined in section 84-1801) shall, when engaged in the business of producing, refining, manufacturing or compounding gasoline for sale or use, or importing gasoline into the state of

Montana or purchasing gasoline within the state of Montana for sale or use; pay to the state board of equalization, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to six cents (6¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1 and 8) refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In making the computation of license tax due and in making payment thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

History: En. Sec. 1, Ch. 230, L. 1957.

84-1802. (2381.12) **Dealers' statements—amount of tax—gasoline tax exemption certificates.** (1) Each dealer shall, not later than the twenty-fifth (25th) day of each calendar month after this act has become effective, render a true statement to the state board of equalization, duly signed, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state board of equalization of license tax, in an amount equal to the lawful tax per gallon imposed by section 84-1801.1, or such other lawful tax as may be imposed by law for each gallon of gasoline so handled, and upon which such license tax was not paid by any other dealer in this state, for engaging in and carrying on such business in this state. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. The dealer may also deduct for each gallon of gasoline sold by him to any county, incorporated city or town, or school district of this state and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon. In addition a dealer may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501.

Any dealer engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one statement.

(2) Any county, incorporated city or town, or any school district of this state may apply to the state board of equalization for a permit to issue governmental gasoline tax exemption certificates. The application for a permit, the permit itself, and any governmental exemption certificates issued pursuant thereto shall be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee not to exceed five dollars ($5.00) for each permit issued, and may provide that such permit shall be valid for a period not exceeding five (5) years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto and any false statement made by the holder in connection therewith.

So long as any governmental permit remains unrevoked, the holder thereof shall have the privilege to purchase gasoline from any seller without the payment of any part of the license tax, imposed by section 84-1801.1, upon surrendering to the seller a governmental gasoline tax exemption certificate certifying that the gasoline is purchased for use directly by the governmental subdivision and not for resale. Any seller who sells gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering the sale, or who sells to another seller who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax on the number of gallons covered by such certificates.

All of the subdivisions of the state of Montana mentioned herein shall be subject to all the conditions, rules and regulations applicable to individuals, and as such subdivisions, can act only by their officer and agents in making application for permits and in issuing governmental gasoline tax exemption certificates, and they shall be responsible for and bound by the acts and declarations of such officers and agents.

(3) Any dealer at an established airport, who purchases aviation gasoline for resale directly to consumers using such gasoline in aircraft, or any consumer who purchases such gasoline in lots of not less than fifty (50) gallons for use in aircraft and not for resale and who purchases from a dealer other than at an established airport, may apply to the state board of equalization for a permit to issue aviation gasoline tax exemption certificates. The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee of not to exceed $5.00 for each permit issued and may provide that said permits shall be valid for a period not exceeding five years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto or any false statement made by the holder in connection therewith.

So long as his permit remains unrevoked, the holder thereof shall have the privilege to purchase aviation gasoline from any dealer without the payment of any part of the license tax, imposed by this section, except the part allocated to the state aeronautics commission upon surrendering to the seller an aviation gasoline tax exemption certificate certifying, if

the holder is a dealer at an established airport, that the gasoline purchased will be resold only to consumers for use directly in aircraft, and if the holder is a consumer purchasing from a dealer other than at an established airport and the purchase is fifty (50) gallons or more, that the gasoline is purchased for use directly in aircraft and not for resale; and any dealer who sells aviation gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering that sale, or who sells to another dealer who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax, on the number of gallons covered by such certificates, except the portion thereof allocated to the state aeronautics commission; but notwithstanding any other provision to the contrary, no tax exemption certificate shall be valid for any purpose nor entitle any dealer to the deduction authorized in subsection (1) of this section unless submitted to the board prior to the end of the second calendar month immediately succeeding the month in which the sale was made with respect to which such certificate issued.

History: En. Sec. 3, Ch. 19, L. 1927; amd. Sec. 4, Ch. 92, L. 1929; amd. Sec. 4, Ch. 6, L. 1931; amd. Sec. 1, Ch. 202 L. 1949; amd. Sec. 1, Ch. 217, L. 1953; amd. Sec. 2, Ch. 17, L. 1955; amd. Sec. 1, Ch. 64, L. 1963; amd. Sec. 4, Ch. 70, L. 1963; amd. Sec. 214, Ch. 147, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 64, once by Ch. 70, and once by Ch. 147. None of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all three amendments.

Collateral References

Licenses⇐30.
53 C.J.S. Licenses § 49.

DECISIONS UNDER FORMER LAW

Loss of Gasoline—Refund

The fact that Laws 1945, ch. 39, providing for a license tax on gasoline to provide funds for payment of state highway debentures allowed a deduction of 2 per cent "for evaporation and other loss of gasoline handled by such dealer" did not preclude refund for entire amount where entire gallonage of gasoline was destroyed in derailment of tank cars. State ex rel. Great Northern Ry. Co. v. State Board of Equalization, 121 M 583, 194 P 2d 627, 631.

84-1802.1. Payment or credit of gasoline tax in event of change in rate of said tax. In the event of an increase in the rate of tax imposed by the state of Montana upon gasoline, each dealer shall pay over to the board of equalization, in the manner herein provided, such additional amount of tax upon all gasoline in storage or in transit on the date of such increase in the rate of tax upon gasoline. In the event of a decrease in the rate of tax imposed upon gasoline, each dealer who shall have previously paid the greater tax shall be entitled to a credit or setoff for the amount of such differential in the rate of tax on gasoline in storage or in transit on the date of such decrease in the rate of tax. Said payment of tax or credit and setoff of tax shall be transmitted to the board of equalization within forty-five (45) days of such increase or decrease in the rate of tax upon gasoline, and shall be accompanied by an affidavit of said dealer containing a true and correct inventory of gasoline in storage or in transit on the date of increase or decrease in the rate of tax imposed on gasoline, except that a credit or setoff of tax shall be allowed in the manner provided herein on

gasoline in storage or in transit on January 16, 1958, if the same be filed with the board of equalization within forty-five (45) days from and after the effective date of this act. The state board of equalization shall have the power to audit the records necessary to determine the validity of any claim.

History: En. 84-1802.1 by Sec. 1, Ch. 175, L. 1959.

Compiler's Note

The effective date of this act was July 1, 1959.

84-1803. (2381.13) **Rules and regulations to be established by state board.** The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 4, Ch. 19, L. 1927.

84-1803.1. Enforcement powers of board. (a) Rules and regulations: The board shall enforce the provisions of this act, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof. (b) Examination of records: The board, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline dealer or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the board for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

History: En. Sec. 2, Ch. 70, L. 1963.

Compiler's Note

The title to Chapter 70, Laws of 1963, indicates that this section is intended to apply to Chapter 18 of Title 84, R. C. M. 1947. However, the body of the act does not specifically so indicate. The title to Chapter 70, Laws of 1963, read as follows: "An act providing that under Chapter 18 of Title 84, R. C. M. 1947, the date of mailing is deemed the date of filing of reports, notices, payments or claims for refunds; providing that the state board of equalization establish rules and regulations and authorizing the state board of equalization to examine records of gasoline dealers."

84-1804. (2381.14) **Delinquent penalty and interest.** Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

History: En. Sec. 5, Ch. 19, L. 1927.

53 C.J.S. Licenses § 63.
51 Am. Jur. 1089, Taxation, § 1277.

Collateral References

Licenses⇐41.

84-1805. (2381.15) **Records to be kept by dealers.** Each dealer shall keep a record in such form as the state board of equalization shall require, showing the total number of gallons handled by such dealer within this state, and such other information as the state board of equalization may require.

History: En. Sec. 6, Ch. 19, L. 1927.

84-1805.1. Records maintained by local governmental agencies issuing exemption certificates. Each county, incorporated city or town, or school district of this state which is the holder of a permit to issue governmental gasoline tax exemption certificates, shall keep a record in such form as the state board of equalization shall require, showing the total number of gallons of gasoline purchased by the permit holder and such other information as the state board of equalization may require.

History: En. Sec. 2, Ch. 64, L. 1963.

84-1806. (2381.16) **Penalty for failure to file statements.** Each dealer, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of handling gasoline, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars ($1,000.00) or imprisonment in the county jail for not to exceed six months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 7, Ch. 19, L. 1927.

Collateral References

Licenses⇨40.

53 C.J.S. Licenses § 66.

84-1807. (2381.17) **Procedure in case of failure to file statement or pay tax—lien of tax.** If any dealer or other person subject to the payment of such license tax shall fail, neglect, or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent dealer and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of

the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes due from any dealer under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such dealer or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the dealer to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid taxes, penalty and interest.

History: En. Sec. 8, Ch. 19, L. 1927; amd. Sec. 1, Ch. 175, L. 1929; amd. Sec. 5, Ch. 70, L. 1963.

84-1808. (2381.18) **Inspection of records.** The books and records of every dealer shall be open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 9, Ch. 19, L. 1927.

84-1809. (2381.19) **Invoice of dealers.** Each dealer in this state handling any gasoline as defined in this act, shall, at the time of such handling, make out and deliver to the purchaser or consignee thereof an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state board of equalization may require.

History: En. Sec. 10, Ch. 19, L. 1927; amd. Sec. 6, Ch. 70, L. 1963.

84-1810. (2381.20) **Exported gasoline not included in computation of tax.** No gasoline exported out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

History: En. Sec. 11, Ch. 19, L. 1927.

84-1811. (2381.21) **Reports of carriers.** Every common carrier, every private carrier and every contract carrier of property, including railroad

companies, motor truck lines and all other carriers of property, who shall haul, transport or ship any gasoline, as defined in section 84-1801 from any other state or foreign country into the state of Montana, or from the state of Montana to any other state or foreign country or from any refinery in the state of Montana to another point within the state of Montana, shall, on or before the 15th day of each calendar month, make and file with the state board of equalization of Montana a statement under oath showing the number of gallons of gasoline, as defined in section 84-1801, contained in each such shipment in interstate commerce and the first movement of such products from any refinery located within the state of Montana to another point within the state of Montana during the preceding calendar month, the names and addresses of the consignor and consignee, the date of delivery to such consignee.

History: En. Sec. 12, Ch. 19, L. 1927; amd. Sec. 1, Ch. 63, L. 1943.

84-1812. (2381.22) **Repealed—Chapter 197, Laws of 1965.**

Repeal

This section (Sec. 13, Ch. 19, L. 1927; Sec. 1, Ch. 178, L. 1929; Sec. 1, Ch. 231, L. 1953; Sec. 1, Ch. 206, L. 1957; Sec. 1, Ch. 42, L. 1961; Sec. 5, Ch. 126, L. 1963; Sec. 1, Ch. 223, L. 1963; Sec. 7, Ch. 69, L. 1965; Sec. 1, Ch. 248, L. 1965), relating to the distribution and use of proceeds of gasoline tax, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

84-1813. (2381.23) **Tax to be collected on motor fuel, when.** The state board of equalization shall, under the provisions of rules and regulations issued by said board, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to nine cents (9¢) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degress (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivision.

History: En. Sec. 2, Ch. 116, L. 1935; amd. Sec. 1, Ch. 210, L. 1955; amd. Sec. 1, Ch. 73, L. 1963.

Collateral References

Licenses⇨16 (9).
53 C.J.S. Licenses § 30.

84-1814. (2381.24) **Delinquency as misdemeanor—penalty.** Any person engaged in the business of handling gasoline as defined in this act, after the license tax imposed by this act, or any part thereof, has been delinquent as provided by this act, or the same has not been paid under protest, shall, in addition to the penalties hereinbefore provided, be deemed guilty of a misdemeanor for each offense, and shall upon conviction thereof, be punished by a fine in any sum not more than five hundred dollars ($500.00) or

imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 19, L. 1927.

Collateral References

Licenses⇐41.

53 C.J.S. Licenses § 62.

84-1815. (2396.1) **Repealed—Chapter 197, Laws of 1965.**

Repeal

This section (Sec. 1, Ch. 18, L. 1927), relating to districts for distribution of highway funds, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

84-1816. (2396.2) **Repealed—Chapter 42, Laws of 1961.**

Repeal

This section (Sec. 2, Ch. 18, L. 1927; Sec. 1, Ch. 74, L. 1945; Sec. 1, Ch. 264, L. 1947; Sec. 1, Ch. 212, L. 1953; Sec. 1, Ch. 241, L. 1953; Sec. 1, Ch. 88, L. 1955; Sec. 2, Ch. 206, L. 1957), relating to use of state highway funds on the federal highway system, was repealed by Sec. 2, Ch. 42, Laws 1961.

84-1817. (2396.3) **Repealed—Chapter 197, Laws of 1965.**

Repeal

This section (Sec. 3, Ch. 18, L. 1927; Sec. 1, Ch. 102, L. 1937; Sec. 1, Ch. 213, L. 1939; Sec. 1, Ch. 175, L. 1943; Sec. 1, Ch. 87, L. 1945; Sec. 1, Ch. 240, L. 1953; Sec. 1, Ch. 113, L. 1957; Sec. 1, Ch. 133, L. 1959; Sec. 1, Ch. 113, L. 1965), relating to the distribution of state highway construction funds, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

84-1818. (2396.4) **Refund of gasoline license tax — procedure.** (1) Any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be exempt from the payment of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town and such exemption from payment of tax shall be allowed at the time of sale when purchaser furnishes to the seller a valid exemption certificate on a form approved by the state board of equalization; provided, that such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the

time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within twelve (12) months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have one hundred twenty (120) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is willfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

(4) Any person desiring to claim refund on gasoline purchased shall obtain from the state board of equalization a permit by application therefor, on such form as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

A fee of one dollar ($1.00) shall be collected from each person to whom a refund permit is issued after July 1, 1953. No refund shall be paid to any person after July 1, 1953, unless said person has first secured

a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five years from the date of issuance.

(6) Whenever a claim shall be rejected, as herein provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

(7) When gasoline is sold and delivered to a person who shall claim to be entitled to a refund with respect to the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale and delivery separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in words and figures and the date of such purchase, and whether an aviation gasoline tax exemption certificate has been issued with respect to such sale, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase, and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued; provided, however, that in case the separate invoice delivered to the purchaser at the time of sale be either lost or destroyed he may make claim to the board of equalization for such refund, supporting the same by affidavit reciting the circumstances of such loss or destruction and produce such other evidence as may be required by the board including an actual duplicate carbon copy of the original invoice or invoices. If the board be satisfied as to the sufficiency of the claim and supporting evidence, proper refund shall be made six (6) months thereafter. Except where surrendered to the purchaser for such purpose, the seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The seller shall, in filling out invoices, use double-faced carbons.

(8) Upon the effective date of this act, each seller of such gasoline upon which a refund may be claimed by the purchaser, shall obtain a permit from the state board of equalization to sell such gasoline upon application therefor to the board, upon such form as the board shall prescribe, which application shall be made under oath and shall contain among other things, the name and address of the applicant, the place or places of his or its business within the state of Montana. Such permit issued shall bear a permit number and the date of issuance. It shall be the duty of the state board of equalization to keep a record of all such permits issued to sellers, and the suspension or cancellation of any thereof. Such permits shall be issued for the calendar year upon payment of a fee of one dollar ($1.00). Such permit must be renewed annually on or before the first day of January, 1956, and each year thereafter, upon such application and fee paid. After the effective date of this act, it shall be unlawful for any person, firm, corporation or association to sell such gasoline upon

which a refund may be claimed without a valid permit therefor. If any such person, firm, corporation or association shall sell any such gasoline without being the holder of a valid permit therefor, he shall be punished by a fine of not less than twenty-five dollars ($25.00), or more than two hundred dollars ($200.00), or be imprisoned in the county jail for a period of not less than ten days (10) nor more than sixty (60) days, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 17, L. 1927; amd. Sec. 1, Ch. 168, L. 1929; amd. Sec. 1, Ch. 175, L. 1931; amd. Sec. 1, Ch. 96, L. 1937; amd. Sec. 1, Ch. 67, L. 1939; amd. Sec. 1, Ch. 130, L. 1947; amd. Sec. 1, Ch. 168, L. 1949; amd. Sec. 1, Ch. 198, L. 1949; amd. Sec. 1, Ch. 221, L. 1953; amd. Sec. 3, Ch. 17, L. 1955; amd. Sec. 1, Ch. 212, L. 1955; amd. Sec. 1, Ch. 17, L. 1963; amd. Sec. 3, Ch. 64, L. 1963; amd. Sec. 6, Ch. 126, L. 1963; amd. Sec. 1, Ch. 224, L. 1963.

Compiler's Notes

This section was amended four times in 1963, by Ch. 17, by Ch. 64, by Ch. 126, and by Ch. 224. Chapter 224 incorporated the change made by Ch. 17; but, except for this, none of the amendatory acts mentioned nor included the changes made by any of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all four amendments.

The effective date of this act was July 1, 1955.

Cross-Reference

Use for aviation purposes, limit of refund, sec. 1-501.

Assignment of Claim

There is nothing in this statute which prevents the claimant who was the actual purchaser of the gasoline from assigning his claim for refund to another where he himself has made the application for refund before assignment. State ex rel. Great Northern Ry. Co. v. State Board of Equalization, 121 M 583, 194 P 2d 627, 631.

Gasoline Lost—Refund

Where gasoline was lost in derailment of tank cars, the purchaser of the gasoline was entitled to a refund of the license tax paid. State ex rel. Great Northern Ry. Co. v. State Board of Equalization, 121 M 583, 194 P 2d 627.

Since there has been no amendment to this law expressing disapproval of an earlier supreme court decision that gasoline lost or destroyed should be included in the provision for a refund of the tax paid, the legislature in effect approved the interpretation. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

Where gasoline was lost during a flood which tipped over storage tank, the purchaser was entitled to a refund of the tax paid. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

Mandamus

In action for mandamus to require approval of claim for refund, the petition must allege that the invoice accompanied the claim. State ex rel. Great Northern Ry. Co. v. State Board of Equalization, 121 M 583, 194 P 2d 627, 632.

Sufficiency of Claim

The state board of equalization cannot deny a valid refund claim for the reason that the claim did not comply with the forms provided by the board when the nature of the claim is such that it cannot be regularly itemized on the prescribed form. Where the claimant has complied with the administrative regulations in so far as it was possible under the circumstances, he has substantially complied and is entitled to the refund. State ex rel. Great Northern Ry. Co. v. State Board of Equalization, 126 M 187, 246 P 2d 220, 221.

Where it has been decided that a claimant is entitled to a refund but the claim is such that it cannot be regularly itemized on prescribed forms, the board cannot set up the failure to comply with technical regulations as a reason for denying the claim. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

References

Burgan & Walker, Inc. v. State Highway Commission, 114 M 459, 464, 137 P 2d 663; Grady v. City of Livingston, 115 M 47, 52, 141 P 2d 346.

Collateral References

Licenses⇨34.
53 C.J.S. Licenses § 57.
51 Am. Jur. 1089, Taxation, § 1276.

Refunds of gasoline tax. 47 ALR 998; 84 ALR 868 and 111 ALR 201.

DECISIONS UNDER FORMER LAW

Application for Refund by County

Where county brought mandamus to compel state board of equalization to grant county's application for refund of gasoline taxes paid, the entry of a money judgment for the county was error but the court should have ordered a peremptory writ of mandate to issue requiring the board to rescind its action in rejecting claim and requiring that such claim be allowed in proper sum and transmitted to board of examiners and auditor for approval and payment. Roosevelt County v. State Board of Equalization, 118 M 31, 162 P 2d 887, 890.

Appropriation

The appropriation by Laws 1947, p. 761 from the gasoline drawback fund "as much as may be necessary to comply with the provisions of the law" was likewise an appropriation of the one cent per gallon transferred to the aviation fund under the provisions of section 1-501. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 640.

Effect of Amendment

The 1947 amendment to this section only added the last paragraph (former subsection (8), now subsection (7)) and the re-enactment of the other parts of the section made no change in the law as it previously existed, therefore such re-enactment did not affect section 1-501 which reduced the amount of refund from five cents to four cents when purchased for operation of aircraft and placed the other one cent in the aviation fund. State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 641.

Erection of State Highway Building

Under the implied powers of the highway commission deemed necessary to render the granted powers efficacious and the performance of its duties effectual, the erection of the building is a proper function in the administration of the highway program, providing expenditures therefor do not exceed 8 per cent of the commission's available funds. Guillot v. State Highway Commission, 102 M 149, 157, 56 P 2d 1072.

84-1818.1. Date of mailing deemed date of filing or receipt—timely mailing bars penalties and tolls—statutory time limitations. When any application, report, notice, payment or claim for credit or refund to be filed with or made to any officer, agent, or employee of the state under the provisions of this chapter has been deposited in the United States mail, addressed to such officer, agent or employee, it shall be deemed filed or received on the date shown by the post-office cancellation mark on the envelope containing it, or on the date it was mailed, if proved to the satisfaction of said officer, agent or employee of the state, establishes that the actual mailing occurred on an earlier date; provided, however, that no penalty for delinquency shall attach, nor will the statutory period be deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that such application, report, notice, payment, or claim for credit or refund was timely deposited in the United States mail, properly addressed to said officer, agent, or employee of the state, even though never received, if a duplicate of such document or payment is filed.

History: En. Sec. 1, Ch. 70, L. 1963.

Compiler's Note

The title to Chapter 70, Laws of 1963, indicates that this section is intended to apply to Chapter 18 of Title 84, R. C. M. 1947. However, the body of the act does not specifically so indicate. For the title to Chapter 70, Laws of 1963, see Compiler's Note under section 84-1803.1.

84-1819. (2396.5) **Penalty for false statements, unlawfully obtaining refunds, or unlawful use of gasoline tax exemption certificates.** Any person

(a) who shall make any false statement in connection with the application for such refund or who shall collect or cause to be repaid to him,

or to any other person, any such refund without being entitled to the same under the provisions of this act, or

(b) who shall make any false statement in any application for a permit to issue governmental gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any gasoline for which such a certificate has been issued otherwise than for the purposes and business of said governmental subdivision, or who shall collect any part of the tax in connection with a sale covered by a valid certificate, or

(c) who shall make any false statement in any application for a permit to issue aviation gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any aviation gasoline for which such a certificate has been issued otherwise than in aircraft or who shall collect that part of the tax, not allocated to the state aeronautics commission, in connection with a sale covered by a valid certificate shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed the sum of one thousand dollars ($1,000.-00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 17, L. 1927; amd. Sec. 4, Ch. 17, L. 1955; amd. Sec. 4, Ch. 64, L. 1963; amd. Sec. 221, Ch. 147, L. 1963.

Compiler's Note

This section was amended twice in 1963, by Ch. 64 and by Ch. 147. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

84-1820. (2396.6) **License and bond of gasoline dealers and distributors.** Any gasoline dealer engaged in the business in the state of Montana of producing, refining, manufacturing, compounding or importing into this state gasoline for sale, or purchasing gasoline within this state in quantities of not less than railway tank car lots, when this act becomes effective, shall, within thirty (30) days thereafter, and any other such dealer prior to the commencement of doing business, shall file an application for a license with the state board of equalization on a form prescribed and furnished by said board setting forth therein such information as may be required by said board. Each gasoline dealer shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state board of equalization, but in no case more than estimated amount of gasoline taxes for two successive months to the effect that said gasoline dealer will pay to the state of Montana all gasoline license taxes, together with penalties and interest, required by law. Upon approval of such application, the state board of equalization shall issue to the gasoline dealer a nonassignable license with a duplicate copy for each place of business of said gasoline dealer in this state, which license shall continue in force until surrendered or canceled.

No gasoline dealer shall, after thirty (30) days from the effective date of this act, sell, or offer for sale, any gasoline within this state until such license is issued; nor shall any gasoline dealer engage in such business, subsequent to the passage of this act, without first procuring such license.

History: En. Sec. 1, Ch. 157, L. 1933.

Collateral References

Licenses⇐22, 26.
53 C.J.S. Licenses §§ 32, 36.

84-1821. (2396.7) **Revocation of license on failure to file statements or pay tax.** The state board of equalization is hereby authorized to revoke any license issued under this act immediately upon the failure of any gasoline dealer to make reports or pay the license tax required by law.

History: En. Sec. 2, Ch. 157, L. 1933.

Collateral References
Licenses⇐38.
53 C.J.S. Licenses § 44.

84-1822. (2396.8) **Violation of act a misdemeanor.** Any gasoline dealer failing to comply with, or violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 157, L. 1933.

Collateral References
Licenses⇐40.
53 C.J.S. Licenses § 66.

84-1823. (2396.9) **Definition of "gasoline dealer."** As used in this act the term "gasoline dealer" means and includes every person, firm, association, joint-stock company, syndicate and corporation engaged in the business in the state of Montana of producing, refining, compounding or importing into this state gasoline for sale, or purchasing gasoline within this state in quantities of not less than railway tank car lots.

History: En. Sec. 4, Ch. 157, L. 1933.

Collateral References
Licenses⇐16 (9).
53 C.J.S. Licenses § 30.

84-1824 to 84-1827. Repealed—Chapter 162, Laws of 1955.

Repeal
These sections (Secs. 1 to 4, Ch. 162, L. 1945), relating to a diesel fuel use tax, were repealed by Sec. 14, Ch. 162, Laws 1955. For new provisions, see secs. 84-1830 to 84-1841.

84-1828. Other terms defined. All other words and terms used in this act, including the words "person," "motor vehicle" and "use" shall, unless otherwise indicated in this act, have the same meaning given to said words by section 84-1801.

History: En. Sec. 5, Ch. 162, L. 1945.

84-1829. Existing statutes not affected by this act. Nothing herein contained shall be deemed to repeal any of the existing laws of Montana relating to the collection of license tax upon diesel fuel as defined herein, but the tax upon all volatile liquids of less than forty-six (46) degrees Baume test shall be collected by the board under rules and regulations prescribed by it as authorized by section 84-1813.

History: En. Sec. 6, Ch. 162, L. 1945.

84-1830. Title. This act may be cited as the "Special Fuel Tax Act."

History: En. Sec. 1, Ch. 162, L. 1955.

84-1831. Definitions. As used in this act, the following definitions shall apply:

(a) "Person" means and includes any person, firm, association, joint-stock company, syndicate, copartnership, or corporation. Whenever used

in any clause prescribing and imposing a fine or imprisonment or both, as applied to a firm, association, syndicate, or copartnership, means and includes the partners or members thereof, and as applied to joint-stock companies and corporations, the officers thereof.

(b) "Board" means the state board of equalization of the state of Montana.

(c) As used in this act, "public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain, or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(d) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(e) "Special fuel" means those combustible gases and liquids commonly referred to as liquid petroleum gases and also diesel fuel or any other volatile liquid of less than forty-six degrees (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(f) "Use" means either the receipt, delivery or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him, while such vehicle is within this state, or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state.

(g) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(h) "Special fuel user" means any person other than a county, incorporated city or town or school district of this state, who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(i) "Bond" means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the board may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the board.

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965.

84-1832. Tax imposed. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1813, or on liquid petroleum gases under section 84-1802. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the board as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the board by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits. (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the board.

Every special fuel user shall obtain from the board, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any member of the state board of equalization or any authorized employee of said board, or any other law enforcement officer.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board.

(c) Form of application: The application shall be filed upon a form prepared and furnished by the board. The application shall contain such information as the board deems necessary.

(d) Bond: No special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the board may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as said board may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five hundred dollars

($500.00), for a special fuel user and not less than one thousand dollars ($1,000.00) for a special fuel dealer.

(e) Issuance: Upon receipt of the application and bond in proper form, the board shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided, however, the board may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the board shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

(f) Expiration of license or permit: Each special fuel dealer's license, special fuel user's license and special fuel vehicle permit shall be valid until suspended or revoked for cause or otherwise canceled.

(g) Assignment forbidden: No special fuel dealer's license, special fuel user's license or special fuel vehicle permit shall be transferable.

(h) Revocation, suspension, cancellation and surrender of license and permit: The board may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the board shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the board may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the board of any such license or permit, the holder thereof shall immediately surrender the same to the board for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the board for cancellation.

The board shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i) Release of surety: Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the board a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The board shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel

dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in section 84-1831 (i), the board forthwith shall cancel the special fuel dealer's or special fuel user's license.

(j) Additional bond or deposit: The board may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 84-1831 (i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the board, said board forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed by said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963.

84-1834. Special fuel dealers' and special fuel users' records. (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the board may require, and shall produce them for the inspection of the board at any time during the business hours of the day.

(b) Retention of records: Said records, receipts, invoices and other pertinent papers shall be required to be kept for a period of at least five (5) years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957.

84-1835. Monthly returns and payments. (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the board, on forms prescribed by said board, a monthly tax return. Such return shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties

of perjury, which declaration shall have the same force and effect as a verification. The return shall show such information as the board may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the board need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the board may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) Computation: The tax imposed by this act shall be computed as follows: (1) with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle, (2) with respect to special fuel as to which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel consumed by him in the propulsion of motor vehicles on the highways of this state.

(c) Payments: The monthly tax return shall be accompanied by remittance covering the tax due hereunder on account of the use as defined in 84-1831(f) of special fuels during the preceding month.

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of one hundred dollars ($100.00) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the board that his failure to file a return within the time prescribed was due to reasonable cause, the board shall waive the penalty provided by this subsection.

(e) Failure to pay tax: Where a special fuel dealer or a special fuel user files a return, but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of one per cent (1%) per month or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(f) Deficiency: If it be determined by the board that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the board shall, on the basis of information available, to it, determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the board shall add the penalty and interest provided in subsection (d) above.

An assessment made by the board pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the board a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

(i) Limitation: Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed under subsection (f) above within five (5) years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within five (5) years after the return is filed, whichever period expires the later.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963.

84-1836. Credits. Any person who has paid a special fuel tax either directly or to the vendor from whom it was purchased, shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

History: En. Sec. 7, Ch. 162, L. 1955.

84-1837. Procedures for credits. Any amount determined to be creditable by the board under section 84-1836 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the board shall then certify the balance to the credit of the dealer or user.

History: En. Sec. 8, Ch. 162, L. 1955.

84-1838. Administration. (a) Rules and regulations: The board shall enforce the provisions of this act, and may prescribe, adopt and en-

force reasonable rules and regulations relating to the administration and enforcement thereof.

(b) Examination of records: The board or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand, they shall be furnished to the board for review or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(c) Evidence: For the purpose of enforcing the provisions of this act, the fact that a special fuel dealer or a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles shall be prima facie evidence that all of such special fuel has been delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

(d) Reciprocal exchange of data: The board shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state.

History: En. Sec. 9, Ch. 162, L. 1955.

84-1839. Violations and penalties. (a) Penalties and remedies: Any person violating any provision of this act is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one hundred dollars ($100.00) nor more than two thousand dollars ($2,000.00) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

(b) Penalties are cumulative: The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this act.

History: En. Sec. 10, Ch. 162, L. 1955; amd. Sec. 3, Ch. 216, L. 1957.

84-1840. Disposition of funds. All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the state highway department.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963.

39 C.J.S. Highways §§ 145-153; 40 C.J.S. Highways §§ 176, 178; 53 C.J.S. Licenses § 56.

Collateral References

Highways⊂⊃90, 99¼; Licenses⊂⊃33.

84-1841. Judicial review and appeals. Any determination of the board hereunder may be reviewed by the district court of Lewis and Clark county, and an appeal may be taken from the judgment of said district court to the supreme court.

History: En. Sec. 12, Ch. 162, L. 1955.

84-1842. Temporary permits to unlicensed users of special fuel vehicles —agents by whom issued. A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the board of equalization may prescribe by order, rule or regulation.

History: En. Sec. 1, Ch. 200, L. 1961.

84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms. The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars ($20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state board of equalization. Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state board of equalization.

History: En. Sec. 2, Ch. 200, L. 1961.

84-1844. Penalty for operation without temporary permit—compliance bonds. Any unlicensed user of special fuel vehicles operating within the state of Montana, without making application for said temporary permit, and paying the specified fee, shall be guilty of committing a misdemeanor and upon conviction, be fined fifty dollars ($50.00). Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the state board of equalization and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961.

CHAPTER 19

LICENSE AND OTHER TAX PROCEEDS—HOW DISPOSED OF

Section 84-1901. Disposition of moneys from certain designated license and other taxes.
84-1902. Disposal of money collected by certain boards and departments.
84-1903. Fund balances transferred to state general fund.

84-1901. Disposition of moneys from certain designated license and other taxes. The state treasurer shall deposit to the credit of the state

general fund all moneys received by him from the collection of automobile drivers' license fees under section 174.11 [1741.11], electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes under chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inclusive, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy per centum (70%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining twenty-five per centum (25%) of the proceeds of the corporation license tax and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana in order to comply with the provisions of section 1a of article XII of the constitution of the state of Montana; and the state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana Beer Act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the State Liquor Control Act, being sections 4-101 to 4-237, inclusive.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965.

NOTE.—Section 1741.11, referred to in this section, was repealed by Sec. 17, Ch. 199, Laws 1943.

Compiler's Notes

The compiler has inserted the bracketed section number 1741.11.

Section 84-4923, included in the reference in this section to sections 84-4901 to 84-4935, was repealed by Sec. 2, Ch. 212, Laws 1957; section 84-4925 was repealed by Sec. 4, Ch. 227, Laws 1957; sections 84-4933 to 84-4935 were repealed by Ch. 260, Laws 1955.

Sections 4-331, 4-334 to 4-336 and 4-343, included in the reference in this section to sections 4-301 to 4-356, were repealed by Sec. 12, Ch. 166, Laws 1951; section 4-340 was repealed by Sec. 2, Ch. 55, Laws 1955.

Sections 4-123 to 4-132, 4-157, 4-162, 4-165, 4-166, 4-168, included in the reference in this section to sections 4-101 to 4-237, were repealed by Sec. 17, Ch. 154, Laws 1965; section 4-155 was repealed by Sec. 1, Ch. 53, Laws 1949; section 4-231 was repealed by Sec. 242, Ch. 147, Laws 1963.

Cross-Reference

Income tax and corporation license tax proceeds pledged to sinking fund for long-range building program bonds, sec. 79-2203.

References

State ex rel. State Aeronautics Commission v. Board of Examiners, 121 M 402, 194 P 2d 633, 638.

DECISIONS UNDER FORMER LAW

Liquor Board Controls Its Business Funds in State Treasurer's Hands

In view of the fact that the state, in taking control of the liquor traffic, thereby embarked in a business enterprise, so recognized by the legislature in various statutes, it seems clear that liquor sales money, until determined to be "net revenues and receipts" under Laws 1941, Ch. 14, Sec. 1, are to be held by the state treasurer as the ex officio liquor board treasurer rather than as treasurer of the state's political funds, as distinguished from its business funds which are under full control of the board. Carey v. McFatridge, 115 M 278, 292, 142 P 2d 329.

84-1902. Disposal of money collected by certain boards and departments. That all moneys collected or received by or paid over to the board of railroad commissioners of Montana, public service commission of Montana, state board of health, milk control board, state auditor and insurance commissioner ex officio, under the provisions of section 82-1231, department of agriculture, labor and industry, or any of the bureaus, divisions, officers or employees of any thereof, and to the state examiner and state forester, by way or on account of fees, licenses, or for any other purpose, on and after July 1, 1941, shall be paid over to the state treasurer who shall deposit the same to the credit of the general fund of the state.

History: En. Sec. 2, Ch. 14, L. 1941.

NOTE.—The department of agriculture, labor, and industry has been divided into two separate departments: the department of agriculture and the department of labor and industry, each having its own commissioner. See sec. 3-101.1.

License on Carriers—Constitutionality

The fact that the fees levied on carriers under sections 8-116, 8-127 are paid into the general fund instead of being credited to the motor carrier fund does not make the collection of such fees from interstate carriers in violation of the commerce clause of the United States Constitution. Aero Mayflower Transit Co. v. Board of Railroad Commrs., 332 U S 495, 92 L Ed 99, 68 S Ct 167, affirming 119 M 118, 172 P 2d 452.

84-1903. Fund balances transferred to state general fund. Any and all balances remaining in any fund or funds established, created, kept or maintained in the state treasurer's office for any of the license or tax laws, specifically mentioned in section 84-1901, or for any of the departments, or bureaus, or divisions thereof, or for any of the officers specifically mentioned in section 84-1902, or for any of the institutions or departments thereof specifically mentioned in section 79-601, at the close of the fiscal year ending July 1, 1941, shall be, by such state treasurer, immediately after the close of such fiscal year, transferred to and shall become a part of the state general fund, excepting moneys for school purposes which under existing law may not be apportioned or distributed until after July 1, 1941.

History: En. Sec. 4, Ch. 14, L. 1941.

CHAPTER 20

LICENSE TAXES—METALLIFEROUS MINES

Section 84-2001. "Person" defined.
84-2002. Persons liable to pay license tax.
84-2003. Gross value of products, how determined.
84-2004. Amount of tax.
84-2005. Statement of gross value of product.
84-2006. Computation and notice of tax.
84-2007. Delinquent taxes—penalty.
84-2008. Procedure in case of failure to file statement.
84-2009. False or erroneous statements—investigation concerning.
84-2010. Rehearing on determination of value of gross product or amount of tax.
84-2011. Lien of tax.
84-2012. License.
84-2013. Commencing business.
84-2014. Additional to other taxes.
84-2015. Unconstitutionality or invalidity.
84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due.

84-2001. (2344.1) **"Person" defined.** The term "person," as used in this act shall mean and include any individual, firm, copartnership, association, joint-stock company, common-law company, business trust, syndicate, and corporation.

History: En. Sec. 1, Initiative No. 28, 1925.

Cross-Reference

License taxes on micaceous mines, secs. 84-5901 to 84-5909.

Constitutionality

Initiative measure No. 28 (this chapter) does not violate section 23, article V of state constitution because arsenic or arsenious oxide, taxable under initiative measure No. 28, are not mentioned in its title. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 25 et seq., 17 P 2d 68.

If an act deals with matters germane to the subject expressed in its title and the title is not of such character as to mislead the public or the members of the legislature, the constitutional requirement with relation to the contents of the title (section 23, article V of the constitution) is sufficiently complied with; where the general object is plainly expressed in the title it is not necessary that it should embody the exact methods of application or procedure, and courts should not embarrass legislation by technical interpretation based upon mere form or phraseology. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 25 et seq., 17 P 2d 68.

Nature of Tax

The tax provided by this chapter is not a property tax—on metals, minerals or mine products—but an occupational license tax, i. e., upon the business of producing metals or precious stones, based upon annual production. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 25 et seq., 17 P 2d 68.

Repealed Sections 2344-2355

Initiative measure No. 28 (this chapter), providing for a gross proceeds of mines tax, specifically repealed sections 2344-2355, Revised Codes of 1921, providing for a net proceeds of metalliferous mines tax, and it was error to contend that measure No. 28 was simply amendatory of the net proceeds act, that act by its repeal having been blotted out as completely as though it had never existed, a new and different act taking its place. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 25 et seq., 17 P 2d 68.

Collateral References

Licenses⇦11 (1).
53 C.J.S. Licenses § 26.

84-2002. (2344.2) **Persons liable to pay license tax.** Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead or any other metal or metals, or precious or semiprecious gems or stones of any kind shall be mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1925, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work or operation in this state, and shall pay to such state treasurer for such annual license the taxes hereinafter prescribed, provided, however, that nothing contained in this act shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property, to procure such license or to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims, or any annual assessment work, or work required in the obtaining of title to mining property from the United States, or required by the laws of the United States or of this state in order to hold possessory title to any mining claims, be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

History: En. Sec. 2, Initiative No. 28, 1925.

Collateral References
Licenses⇨11 (1).
53 C.J.S. Licenses § 26.
33 Am. Jur. 345, Licenses, § 25.

84-2003. (2344.3) **Gross value of products, how determined.** The total "gross value of product" as used in this act, shall mean the market value of all merchantable metals, precious and semiprecious gems and stones extracted or produced, each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. That whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents, without any deductions for costs of smelting, reduction or treatment, or otherwise, based upon the average quotations of the price of such metals, or mineral products, in the city of New York, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or other standard publications, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, in such a manner as may seem equitable.

History: En. Sec. 3, Initiative No. 28, 1925.

Deductions in Fixing Tax for Smelting, Reduction "or Otherwise"

In the provision of this section which prohibits "any deductions for costs of smelting, reduction or treatment, or otherwise," the words "or otherwise" relate to whatever expense is incurred in making the gross product. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 25 et seq., 17 P 2d 68.

Market Value in Montana, Not in New York, Taxable

Under this section, which declares that the amount of the license tax exacted by the state of operators of metalliferous mines shall be determined by ascertaining the market value of the gross product resulting from the smelting, reduction or treatment of the ore, based upon the average quotations of the price of the metals or mineral products in New York City, their market value in Montana, not that prevailing in New York, is taxable. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 25 et seq., 17 P 2d 68.

New York Price is Basis

Since, under this section, it is contemplated that in fixing the market value of zinc the New York price shall be considered as a basis, the state board of equalization in fixing market value upon the basis of the price of the metal in St. Louis, did so in violation of the act. State ex rel. Snidow v. State Board of Equalization, 93 M 19, 25 et seq., 17 P 2d 68.

Collateral References
Licenses⇨30.
53 C.J.S. Licenses § 49.

84-2004. (2344.4) **Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, shall be one dollar, together with an additional sum or amount computed on the gross value of product which may have been derived by [such person from] such business, work or operation within this state during the calendar year immediately pre-

ceding, at the following rates one-half of one per cent (½ of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars ($100,000) and does not exceed two hundred and fifty thousand dollars ($250,000); three-fourths of one per cent (¾ of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars ($250,000) and does not exceed four hundred thousand dollars ($400,000); one per cent (1%) of the amount by which the gross value of product exceeds four hundred thousand dollars ($400,000) and does not exceed five hundred thousand dollars ($500,000) and one and one-fourth per cent (1¼%) of the amount by which the gross value of product exceeds five hundred thousand dollars ($500,000).

History: En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959.

Compiler's Note

The bracketed words "such person from" were inserted by the compiler. The words were in the section prior to the 1959 amendment, but were omitted from the 1959 act, apparently through a typographical error.

Collateral References

Licenses⇨29.
53 C.J.S. Licenses § 48.

84-2005. (2344.5) **Statement of gross value of product.** Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of the corporation, joint stock or other company or syndicate and must be delivered to the state board of equalization not later than the fifteenth day of April. Such statement shall show the following:

1. The name and address of the owner or lessee of the mine or mining property.

2. The description and location of the mine or mining property.

3. The number of tons of ore or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement.

4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by the statement and such other information as the state board of equalization may require.

5. The gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by the statement.

6. The gross value of product in dollars and cents.

History: En. Sec. 5, Initiative No. 28, 1925.

84-2006. (2344.6) **Computation and notice of tax.** The state board of equalization shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said board shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p. m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; amd. Sec. 1, Ch. 165, L. 1959.

84-2007. (2344.7) **Delinquent taxes — penalty.** All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p. m., on the thirtieth day of June following the date when the same are assessed and certified to the state treasurer, and as the same become delinquent a penalty of ten per centum shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of twelve per centum per annum from the date of becoming delinquent until paid.

History: En. Sec. 7, Initiative No. 28, 1925; amd. Sec. 2, Ch. 165, L. 1959.

84-2008. (2344.8) **Procedure in case of failure to file statement.** If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state board of equalization, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or

county officer or board under any law of this state, and from any other information which the board may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in the same manner as though such statement had been filed within time, and the state shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies.

History: En. Sec. 8, Initiative No. 28, 1925.

84-2009. (2344.9) **False or erroneous statements—investigation concerning.** (1) Should the state board of equalization have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the board and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the board or any of its members, or refusing to permit the board, or its members, employees or accountants to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the board, after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the board shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per centum, and shall thereupon immediately certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty certified to the state treasurer.

(2) The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per centum per annum. Provided further, that in order to verify such statement and return the state board of equalization may require any person, corporation, association, or company engaged in the business of smelting, milling,

reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the board and testify concerning the gross mineral content of any such ore, or at the request of said board to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the said state board of equalization, or its members, employees, or accountants at any time or place, that said board may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state board of equalization or shall refuse to appear before the board to testify concerning the gross mineral content of any such ore, or shall refuse to allow the board, its members, employees or accountants at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 9, Initiative No. 28, 1925.

Collateral References
Licenses⇐30, 40, 41.
53 C.J.S. Licenses §§ 49, 63, 66.

84-2010. (2344.10) **Rehearing on determination of value of gross product or amount of tax.** Every person whose license tax has been determined and assessed by the state board of equalization under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the board as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days after the date of notice thereof, required to be given to such person, file with the board a petition for a rehearing in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the board therefrom that the board has erred in any manner in ascertaining and determining the

amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a rehearing the board shall take no further steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the board that it has erred in any manner the board shall grant such rehearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, any taxpayer interested, and the board may introduce witnesses and take testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and reassess the amount of the license tax to be paid by such person, and give notice thereof in the manner required by section 84-2006.

History: En. Sec. 10, Initiative No. 28, 1925.

84-2011. (2344.11) **Lien of tax.** The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 11, Initiative No. 28, 1925.

Collateral References
Licenses⇦31.
53 C.J.S. Licenses § 50.

84-2012. (2344.12) **License.** Whenever any license tax is paid under the provisions of this act the state board of equalization shall issue to the person paying the same a license authorizing such person to engage in and carry on such business until the first day of January immediately following the year for which such license tax is paid and such license issued.

History: En. Sec. 12, Initiative No. 28, 1925; amd. Sec. 7, Ch. 14, L. 1941.

Collateral References
Licenses⇦33.
53 C.J.S. Licenses § 56.

84-2013. (2344.13) **Commencing business.** If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semiprecious gems and stones are extracted and produced, such person, must, within sixty days after so engaging in or commencing to carry on such business, notify both the state board of equalization and the state treasurer of such fact.

History: En. Sec. 13, Initiative No. 28, 1925.

84-2014. (2344.14) **Additional to other taxes.** The license taxes herein provided for shall be in addition to all other taxes, licenses, and other fees, now required to be paid by persons subject to the provisions of this act.

History: En. Sec. 14, Initiative No. 28, 1925.

84-2015. (2344.15) **Unconstitutionality or invalidity.** If any clause, sentence, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No caption or any section or set of sections shall in any way affect the interpretation of this act, or of any part thereof.

History: En. Sec. 16, Initiative No. 28, 1925.

Collateral References
Statutes⇨64 (8).
82 C.J.S. Statutes § 109.

84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones, are produced and pay the tax due for such period as it carried on such business, on or before the date of such dissolution or cessation of business. The state board of equalization may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: En. Sec. 1, Ch. 11, L. 1941.

CHAPTER 21

LICENSE TAXES—NATURAL GAS DISTRIBUTORS

Section 84-2101. Definition of "person."
84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.
84-2103. Time for payment of tax.
84-2104. Certificate to be filed with board—time for filing—contents of certificate.
84-2105. Records to be kept as required by board.
84-2106. Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by board—adjustment of excess payment or deficit.
84-2107. Falsification or failure to file statements unlawful.
84-2108. Board to determine tax if no statement filed—penalty and interest—collection of tax.
84-2109. Violations of provisions of act deemed misdemeanor—penalty.
84-2110. Additional to other taxes and fees.

84-2101. (2408.1) **Definition of "person."** The term "person," as used in this act, shall mean and include any individual, firm, copartnership and every corporation, joint-stock company, syndicate and association.

History: En. Sec. 1, Ch. 180, L. 1933.

Collateral References
Gas⇨10.
38 C.J.S. Gas § 4.

84-2102. (2408.2) **Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not comtemplated by act.** Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning July 1, 1957, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to one-half (½) of one (1) cent for each one thousand (1000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale, and that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths (4/10) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

History: En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957.

NOTE.—In State v. Montana-Dakota Utilities Co., 114 M 161, 174, 133 P 2d 354, so much of this section as purported to authorize a tax on gas produced within the state and "conveyed for use outside the state," was held unconstitutional and is therefore omitted from the 1947 Code.

Collateral References

Gas⊂⊃10.
38 C.J.S. Gas § 4.
33 Am. Jur. 350, Licenses, § 29.

DECISIONS UNDER FORMER LAW

Constitutionality

This section (prior to enactment of the 1947 Code) is void in so far as it purports to impose a license tax on persons engaged in, or carrying on the business of conveying through a pipeline gas produced within this state for use outside the state as imposing a burden upon interstate commerce, in conflict with section 8, article I of the constitution of the United States. State v. Montana-Dakota Utilities Co., 114 M 161, 171, 133 P 2d 354.

84-2103. (2408.3) **Time for payment of tax.** Such annual license tax shall be paid in quarterly installments for the quarters ending respectively, March 31, June 30, September 30 and December 31 in each year, beginning with the quarter ending March 31, 1933, and the amount of license tax due for each quarter shall be paid to the state treasurer within thirty (30) days after the end of each such quarter.

History: En. Sec. 3, Ch. 180, L. 1933.

84-2104. (2408.4) **Certificate to be filed with board—time for filing—contents of certificate.** Each and every person engaged in any such business in the state of Montana at the time when this act becomes effective must not, later than the thirtieth day of April, 1933, and every person who shall engage in any such business at any time after the date when this act becomes effective, immediately, upon engaging in any such business, file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaged in carrying on such business in this state, giving the place or places of business and the location of the well or wells, plant or property, owned, leased, controlled or operated by such person in such business; the name and address of the managing agent in this state if an association, corporation, joint-stock company or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same, of an association, joint-stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 180, L. 1933.

84-2105. (2408.5) **Records to be kept as required by board.** Every such person shall keep a record, in such form as the state board of equalization may require, of all natural gas extracted or produced, transported or carried, sold, furnished or delivered by such persons in this state and such records shall at all times during the business hours of the day, be subject to inspection of the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 180, L. 1933.

84-2106. (2408.6) **Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by board—adjustment of excess payment or deficit.** (1) Each and every person must, within thirty (30) days after the quarterly period ending March 31, 1933, and within thirty (30) days after the end of each following quarterly period, make out, in duplicate, on forms prescribed by the state board of equali-

zation, and deliver to the state treasurer, a statement showing the quantity of merchantable or marketable gas produced or extracted, transported or carried, sold, furnished or delivered by such person in the state of Montana during each month of each quarterly period and during the whole of said quarterly period, together with total amount due the state as license tax for such quarterly period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarterly period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in or carrying on such business at more than one (1) place in this state, or owning, controlling or operating more than one (1) natural gas well or plant for the distribution of natural gas in this state, may include all thereof in one (1) statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him, the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, and the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year.

(2) The state treasurer shall keep a book in such form as shall be approved by the state board of equalization, in which he shall enter such statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return and the amount of tax, if any, paid by such person, which book shall be designated "state treasurer's record of natural gas license tax." The state treasurer shall within ten (10) days after the end of each month deliver over to the state board of equalization all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state board of equalization.

(3) It shall be the duty of the state board of equalization to examine each of such statements and compute the taxes thereon, and the amount so computed by the board shall be the taxes imposed, assessed against and payable by the person making the statement for the quarterly period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state board of equalization within ten (10) days after written notice of the amount of the deficiency shall be mailed by the state board of equalization to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 6, Ch. 180, L. 1933.

84-2107. (2408.7) **Falsification or failure to file statements unlawful.** It shall be unlawful for any such person to fail, neglect or refuse to file any

statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular way.

History: En. Sec. 7, Ch. 180, L. 1933.

84-2108. (2408.8) **Board to determine tax if no statement filed—penalty and interest—collection of tax.** If any such person shall fail, neglect or refuse to file any statement required by the provisions of this act within the time therein required, the state board of equalization shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of natural gas extracted and produced, transported or carried, sold, furnished or delivered by such person in this state during such quarterly period and during each month thereof, and shall determine and fix the amount of the license tax due the state from such person for such quarterly period and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five (25) per cent thereof and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with penalty added thereto, and interest on the whole thereof at the rate of twelve (12) per cent per annum from the date of making such statement by the state board of equalization, until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same.

History: En. Sec. 8, Ch. 180, L. 1933.

84-2109. (2408.10) **Violations of provisions of act deemed misdemeanor—penalty.** Any violation of any of the provisions of this act shall be deemed a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars ($1000), or imprisonment in the county jail not exceeding six (6) months, or both such fine and imprisonment.

History: En. Sec. 10, Ch. 180, L. 1933.

84-2110. (2408.11) **Additional to other taxes and fees.** The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 180, L. 1933.

CHAPTER 22

LICENSE TAXES—OIL PRODUCERS

Section 84-2201. "Person" defined.
84-2202. Oil producers' license tax—amount—exceptions.
84-2203. Payment of tax.
84-2204. Determination of gross value of product.
84-2205. Producers to file reports.
84-2206. Record of product—carriers to furnish data.
84-2207. Statement to accompany payment—records—collection of tax—refunds.
84-2208. Falsifying or failing to file statements unlawful.
84-2209. Procedure to compute and collect tax in absence of statement.
84-2210. Penalty for violation of act.
84-2211. License tax supplemental.

84-2201. (2397) **"Person" defined.** The term "person," as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint-stock company, syndicate and association.

History: En. Sec. 1, Ch. 266, L. 1921; re-en. Sec. 2397, R. C. M. 1921.

Injunction Restraining Collection

Where in 1936 the supreme court granted an injunction to an oil and gas company "forever" restraining and enjoining the state board of equalization from levying or collecting certain taxes upon oil and gas produced under a lease of trust patent Indian land, but the board in 1941 believing that a later decision of the supreme court of the United States superseded and overruled the former decision, took steps to collect the taxes, the oil company should have proceeded under section 93-9801, subsection 5 instead of instituting a new proceeding, which was properly dismissed. Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 224, 225, 114 P 2d 521.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534; Byrne v. Fulton Oil Co., 85 M 329, 340, 278 P 514; Northern Pacific Ry. Co. v. Gas Development Co., 103 M 214, 217, 62 P 2d 204; Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 359, 362, 116 P 2d 1012.

84-2202. (2398) **Oil producers' license tax — amount — exceptions.** Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) two per cent of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) two and one-half per cent of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided,

further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959.

Estate in Land Held Taxable

Oil and gas leases on Indian lands held under trust patent, in which the oil and gas was reserved for the benefit of the tribe, created an estate in land distinct and separate from the interest held by the federal government, which estate was subject to operators' net proceeds tax and the gross production tax. British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 302, 54 P 2d 129, affirmed 299 U S 159, 81 L Ed 95, 57 S Ct 132.

Land Leased from United States

An oil company operating under leases from the United States government and assigned to it, under the terms of which the lessees were given the exclusive right to explore for, extract and dispose of oil and gas in lands covered by homestead entries for which patents had not issued, is not such an agency or instrumentality of the federal government as to render the license or occupation tax imposed by this chapter, invalid. Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353, affirmed 268 U S 45, 69 L Ed 841, 45 S Ct 440.

Production under Lease of Trust Patent Indian Land

The state board of equalization is authorized to levy the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 288, 54 P 2d 117, with exception of the royalty owner's net proceeds tax, for the reason that the federal supreme court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 359, 361, 116 P 2d 1012.

References

Northern Pacific Ry. Co. v. Gas Development Co., 103 M 214, 217, 62 P 2d 204.

Collateral References

Licenses⇨11 (1), 29.

53 C.J.S. Licenses §§ 30, 48.

33 Am. Jur. Licenses, p. 326, § 3; p. 332, § 9.

DECISIONS UNDER FORMER LAW

License Tax

The tax of 1 per cent of the gross value of crude oil exacted from persons engaged in producing petroleum within the state, by chapter 266, Laws of 1921, is not a property tax or imposed for regulatory purposes under the police power, but is a revenue measure and the exaction is a license or occupation tax. Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353, affirmed 268 U S 45, 69 L Ed 841, 45 S Ct 440.

Tax Payable by Lessee or Operator

Under this section, imposing a license tax upon persons engaged in carrying on the business of producing crude oil within the state of 2 per centum of the total gross value of oil produced, the tax is payable by the lessee or operator and not by the land owner or lessor. Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

The operator of an oil well is without right to withhold from the holder of a royalty interest the 2 per cent oil producer's license tax provided for by this section, such tax being payable by him and not the royalty holder. Byrne v. Fulton Oil Co., 85 M 329, 340, 278 P 514.

84-2203. (2399) **Payment of tax.** Such license tax shall be paid in quarterly installments for the quarterly periods ending respectively March 31, June 30, September 30 and December 31, of each year, and the amount of the license tax for each quarterly period shall be paid to the state board

of equalization within thirty (30) days after the end of each quarterly period.

History: En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R. C. M. 1921; amd. Sec. 2, Ch. 67, L. 1923; amd. Sec. 8, Ch. 14, L. 1941.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534; Byrne v. Fulton Oil Co., 85 M 329, 340, 278 P 514.

Collateral References

Licenses⇨32 (1), 33.
53 C.J.S. Licenses §§ 51, 56.

84-2204. (2400) **Determination of gross value of product.** The total gross value of all petroleum, and other mineral or crude oil produced each year shall be determined by taking the total number of barrels thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the state board of equalization; provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil is produced or for pumping said petroleum or other mineral or crude oil from the said well to a tank or pipeline.

History: En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R. C. M. 1921; amd. Sec. 3, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

84-2205. (2401) **Producers to file reports.** Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1923, and every person who shall engage in such business at any time after the date when this act becomes effective, must, immediately upon engaging in such business, file with the state board of equalization, a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R. C. M. 1921; amd. Sec. 4, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

84-2206. (2402) **Record of product—carriers to furnish data.** Every such person shall keep a record in such form as the state board of equalization may require, of all petroleum and other mineral or crude oil extracted or produced by such person in this state, and such records shall at all times

during the business hours of the day be subject to inspection by the state board of equalization, its members, agents, or employees. It shall be the duty of railroad companies, pipeline and transportation companies carrying crude or mineral oil, to furnish to the state board of equalization, whenever requested so to do, all data relative to the shipment of said products, that may be required to properly enforce the provisions of this act. The failure of any railroad company, pipeline, and transportation companies to comply with the provisions of this section shall make such companies liable to a penalty of one hundred ($100.00) dollars for each day it shall fail to furnish such statement.

History: En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R. C. M. 1921; amd. Sec. 5, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

Collateral References

Licenses⇦30, 41.

53 C.J.S. Licenses §§ 49, 63.

84-2207. (2403) **Statement to accompany payment—records—collection of tax—refunds.** (1) Each and every person must, within thirty days after the quarter ending March 31, 1923, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil well in this state, may include all thereof in one statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year. The state treasurer shall keep a book in such form as shall be approved by the state board of equalization, in which he shall enter each statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return, and the amount of tax, if any, paid by

such person, which book shall be designated "state treasurer's record of oil production license tax."

(3) The state treasurer shall within ten days after the end of each month deliver over to the state board of equalization all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state board of equalization. It shall be the duty of the state board of equalization to examine each of such statements and compute the taxes thereon, and the amount so computed by the board shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state board of equalization within ten days after written notice of the amount of the deficiency shall be mailed by the board of equalization to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 7, Ch. 266, L. 1921; re-en. Sec. 2403, R. C. M. 1921; amd. Sec. 6, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

84-2208. (2404) **Falsifying or failing to file statements unlawful.** It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 8, Ch. 266, L. 1921; re-en. Sec. 2404, R. C. M. 1921; amd. Sec. 7, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

84-2209. (2405) **Procedure to compute and collect tax in absence of statement.** If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

History: En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R. C. M. 1921; amd. Sec. 8, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534; Shubat v. Glacier County, 93 M 160, 165, 18 P 2d 614.

84-2210. (2407) **Penalty for violation of act.** Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 11, Ch. 266, L. 1921; re-en. Sec. 2407, R. C. M. 1921.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

Collateral References

Licenses⇐40.
53 C.J.S. Licenses § 66.

84-2211. (2408) **License tax supplemental.** The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 12, Ch. 266, L. 1921; re-en. Sec. 2408, R. C. M. 1921.

References

Mid-Northern Oil Co. v. Walker, 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co., 83 M 353, 356, 272 P 534.

Collateral References

Licenses⇐28.
53 C.J.S. Licenses § 46.

CHAPTER 23

LICENSE TAXES—SLEEPING CAR COMPANIES

Section 84-2301. Definitions.
84-2302. Reports.
84-2303. Assessment.
84-2304. Method of determining valuation.
84-2305. Notice of hearing concerning valuation—right to appear and be heard.
84-2306. License tax—amount—levy—notice—payment.
84-2307. Failure to report—nonpayment—action for collection.
84-2308. Estoppel—excusing failure to file report.
84-2309. First imposition of tax.
84-2310. Tax receipt serves as license to do business.

84-2301. (2315.1) **Definitions.** The term "board" when used in this act shall mean the state board of equalization.

Any person, persons, copartnership, joint-stock company, association, or corporation (not being a railroad company or a lessee of a railroad company) wherever organized or incorporated, owning and operating, or operating any cars known as dining, buffet, chair, parlor, palace or sleeping cars, which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a sleeping car company for the purposes of this act.

History: En. Sec. 1, Ch. 64, L. 1923.

Collateral References

Taxation⇐142.
84 C.J.S. Taxation § 160.

84-2302. (2315.2) **Reports.** Every sleeping car company shall annually on or before the first day of March and in such forms and covering such period as the state board of equalization shall prescribe, make and file with it a statement verified by the oath of the person, agent or officer making the same, setting forth the facts called for. Such report shall contain:

(1) The name of the company.

(2) The nature of the company, whether a person, agent, trustee, lessee, receiver, or other person, or a joint-stock company, partnership, association, or corporation.

(3) The location of its principal office, and under the laws of what state or country organized, and when.

(4) The name and address of the president, secretary, auditor, treasurer and superintendent or general manager.

(5) The name and address of its chief officer or managing agent in Montana.

(6) Its capital stock:

(a) The amount authorized.

(b) The amount issued.

(c) The amount of capital stock invested in its sleeping car business.

(7) The number of shares of stock:

(a) Outstanding.

(b) Not issued.

(c) Treasury; and whether common or preferred.

(8) The amount of the bonds outstanding; when issued; when due, and the rate of interest of each issue.

(9) The par market value of the stocks and bonds issued and outstanding.

(10) The whole length and the names of railroad lines over which its cars were transported in the state of Montana.

(11) The total car mileage and the car mileage within this state.

(12) The gross and net earnings during the year.

(13) Such other facts and information as such company or the state board of equalization may deem material upon the question of the true and full value of said property within this state. Said board shall furnish forms upon which to make such reports.

History: En. Sec. 2, Ch. 64, L. 1923.

Collateral References

Taxation⇐366 et seq.
84 C.J.S. Taxation § 432.

84-2303. (2315.3) **Assessment.** The state board of equalization shall carefully consider all reports made pursuant to section 84-2302 and all other facts and evidence collected and available, and shall fix the valuation of the property of sleeping car companies operating in the state for the purpose of levying and collecting license taxes thereon, as hereinafter provided.

History: En. Sec. 3, Ch. 64, L. 1923.

Collateral References

Taxation⇐376.
84 C.J.S. Taxation § 445.

84-2304. (2315.4) **Method of determining valuation.** (1) It shall find, ascertain, and determine the actual value in money of the entire amount of capital stock of each such company invested in its sleeping car business, and when the value of the capital stock cannot be reliably ascertained it shall find, ascertain and determine the value of the entire property used in said business. From the amount so obtained, it shall deduct the actual value of its real estate situate without this state not used in said business, and also the actual value of all its personal property, not used in said business. The remainder shall be taken and considered as the actual value of the capital stock of such company invested or used in its business.

(2) The board shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile, and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in section 84-2305.

History: En. Sec. 4, Ch. 64, L. 1923.

84-2305. (2315.5) **Notice of hearing concerning valuation—right to appear and be heard.** The board shall thereupon give notice to the officer of such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the said board may make such changes in its valuation as shall appear just and reasonable.

History: En. Sec. 5, Ch. 64, L. 1923.

84-2306. (2315.6) **License tax—amount—levy—notice—payment.** The board shall thereupon levy a license tax upon the property of such sleeping car company at the rate of one and one-half per cent (1½%) on the valuation thus found by it for the use of the state, and the board shall certify such assessment and levy to the state treasurer, who shall thereupon, by registered letter, notify the officer attesting the report of such company, of the amount of the assessment, the rate of levy and the amount of the tax; and such company shall have thirty days after the mailing of such notice within which to pay said tax to the state treasurer. And such tax when paid shall be turned into the general fund of the state treasury.

History: En. Sec. 6, Ch. 64, L. 1923.

Collateral References

Taxation⇐388.

84 C.J.S. Taxation § 427.

33 Am. Jur. 365, Licenses § 41 et seq.; 51 Am. Jur. 589, Taxation, § 86.

84-2307. (2315.7) **Failure to report—nonpayment—action for collection.** (1) If any sleeping car company shall fail to make the report required of it by this act, the board shall proceed upon the best information it may be able to obtain to fix the valuation against such company and shall notify it by letter of the action taken in that behalf. Thereupon the company so notified may appear and be heard as above provided.

(2) All taxes remaining unpaid after notice from the state treasurer, as above provided, shall draw interest at the rate of fifteen per centum per

annum after they are due, and upon such failure to pay, the attorney general shall proceed by action in the name of the state against such company to collect the same, together with interest and the cost of the suit.

(3) Any such company claiming to be aggrieved by the levy of a license tax upon its property, may, within six months from the payment of the tax, and not thereafter, bring and maintain an action against the state in the district court of Lewis and Clark county to recover such part of the tax so paid as shall exceed the amount the company should have paid. The state may be served with the summons in such action by delivering a copy thereof to the attorney general or leaving it at his office in the capitol with one of his assistants.

(4) But no such company shall be permitted to contest the validity of any tax assessed and levied against it, unless at or before the time of serving its complaint or answer, as the case may be, it shall deposit with the state treasurer the amount of such tax, together with interest thereon at the rate of fifteen per cent per annum as above provided. In case the amount of the tax justly and equitably due from such company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court by the state treasurer.

History: En. Sec. 7, Ch. 64, L. 1923.

Collateral References

Taxation⇨372, 583 et seq.
84 C.J.S. Taxation §§ 442, 698.

84-2308. (2315.8) **Estoppel—excusing failure to file report.** (1) If any company described in section 84-2301 or its officers or agents shall unreasonably refuse or neglect to make any report required by law or by the said board, or shall unreasonably refuse or neglect to answer any material question, or to permit an inspection of its records, books, accounts or papers when requested by said board, it shall be estopped to question or impeach the action or determination of the board, except upon satisfactory proof of fraud or mistake injurious to it.

(2) No such company shall be allowed in any action or proceeding to question the amount or valuation of its property and franchises as assessed by the board, unless it shall have made and filed with the board a full and complete report of the facts and information prescribed by law, and called for by the board; provided, that the refusal or neglect of such company to file its report in time may, on verified petition and for good cause shown, be excused by the board on condition that such company make a full and complete report disclosing all facts and information required of it within fifteen days after leave is given to file such report, and shall appear before the board and make full disclosure of all property liable to assessment and taxation under this act.

History: En. Sec. 8, Ch. 64, L. 1923.

Collateral References

Taxation⇨366 et seq.
84 C.J.S. Taxation § 431.

84-2309. (2315.9) **First imposition of tax.** The license tax shall be first imposed and paid for the whole calendar year 1923, and shall be based upon the reports as prescribed in section 84-2302 for the year 1922, and such report shall be made to the board by April first, 1923.

History: En. Sec. 9, Ch. 64, L. 1923.

Collateral References
Taxation⇨142.
84 C.J.S. Taxation § 160.

84-2310. (2315.10) **Tax receipt serves as license to do business.** The receipt by the state treasurer of the license tax paid in full shall serve as a license to the sleeping car company to conduct its business in the state of Montana during the year when issued.

History: En. Sec. 10, Ch. 64, L. 1923.

CHAPTER 24

LICENSE TAXES—STORE LICENSE

Section 84-2401. Store license from board of equalization required.
84-2402. Application and fee for license.
84-2403. Board to consider application—issuance of license.
84-2404. Expiration and renewal of licenses.
84-2405. Retailers subject to act—license fees for.
84-2406. Annual license fees—who must procure license.
84-2407. Wholesale store licenses.
84-2408. Repealed.
84-2409. Act to whom applicable.
84-2410. "Store" defined.
84-2411. Penalty.
84-2412. Employment of help—disposal of license money.
84-2413. Repeal and saving clause.

84-2401. Store license from board of equalization required. That it shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to open, establish, operate or maintain any store or stores in this state without first having obtained a license to do so from the state board of equalization, as hereinafter provided.

History: En. Sec. 1, Ch. 163, L. 1939.

NOTE.—The original store license tax law of Montana was Ch. 155, Laws 1933, appearing as Sections 2420.1-2420.11, R. C. M. 1935. This act was repealed and a new state license law enacted by Ch. 199, Laws 1937 which was held void in Vaughn & Ragsdale Co. v. State Board of Equalization, 109 M 52, 96 P 2d 420, and was expressly repealed by Ch. 163, Laws 1939.

Application of Statute

The taxes imposed by store license tax law, not being dependent upon any "regulatory provisions" or any "regulations applicable to those licensed," are applicable, as such, with regard to stores maintained in Glacier National Park. State ex rel. State Board of Equalization v. Glacier Park Co., 118 M 205, 164 P 2d 336, 371.

Controlling Statute

Chapter 199, Laws 1937 (omitted), providing for the licensing of chain stores, and found invalid because carrying an enacting clause other than as prescribed by section 20, article V of the state constitution, was re-enacted by ch. 163, Laws 1939 for the purpose of correcting the defective enacting clause, and this chapter is now the controlling statute on the subject. Vaughn & Ragsdale Co. v. State Board of Equalization, 109 M 52, 57, 96 P 2d 420.

Collateral References

Licenses⇨15 (1).
53 C.J.S. Licenses § 30.
33 Am. Jur. Licenses, p. 333, § 9; p. 336, § 17; p. 359, § 34; p. 362, § 36; p. 369, § 47.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract. 30 ALR 834; 42 ALR 1226 and 118 ALR 646.

Liability for mercantile license tax, as affected by governmental regulations or restrictions having adverse effect on business in which licensee is engaged. 143 ALR 586.

84-2402. Application and fee for license. Any person, firm, corporation, association, copartnership or group desiring to open, establish, operate

or maintain a store in the state of Montana prior to September first of that calendar year shall apply to the state board of equalization for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the state board of equalization, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state board of equalization may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store, but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank.

Each such application shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407.

History: En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965.

Collateral References
Licenses⇨22.
53 C.J.S. Licenses § 39.

84-2403. Board to consider application—issuance of license. As soon as practicable after the receipt of any such application, the state board of equalization shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the state board of equalization shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

If an application is found to be satisfactory, and if the filing and license fee, as herein prescribed, shall have been paid, the state board of equalization shall issue to the applicant a license for each store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued.

History: En. Sec. 3, Ch. 163, L. 1939.

84-2404. Expiration and renewal of licenses. All licenses shall be so issued so as to expire upon the thirty-first day of December of each calendar year. On or before the first day of January of each year, every firm, person, corporation, association, copartnership having a license, shall apply to the state board of equalization for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state board of equalization.

Each such application for a renewal license shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407.

No license shall lapse prior to the first day of March next following the year for which the license was issued, and if, by such first day of March, an application for a renewal license has not been made, the fee charged shall be double the rate prescribed in sections 84-2405, 84-2406 and 84-2407.

History: En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965.

References

State ex rel. State Board of Equalization v. Glacier Park Co., 118 M 205, 164 P 2d 366, 370.

Collateral References

Licenses⇐36.
53 C.J.S. Licenses § 42.

84-2405. Retailers subject to act—license fees for. Every person, firm, corporation, association, copartnership or group opening, establishing, operating or maintaining one or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by such person, firm, corporation, association, or copartnership or retailer under this act, but such units or members shall be taxed as individual units; and provided further, that the term "store" shall not mean or include for the purpose of computing the license fee prescribed in this section the following types of business, but that they shall be licensed under the prescribed fees in section 84-2406: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent (75%) of the gross business is in petroleum products exclusively; or lumberyards where seventy-five per cent (75%) of the gross business is in building material and hardware exclusively; or grain elevators where seventy-five per cent (75%) of the gross business is dealing in grains and seeds exclusively; and those businesses in which the sale of goods, wares, and merchandise is less than twenty-five per cent (25%) of the gross business.

The license fee herein prescribed shall be paid annually.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be six dollars ($6.00).

2. Upon the second store, the annual license fee shall be fifty-one dollars ($51.00).

3. Upon the third store, the annual license fee shall be one hundred and one dollars ($101.00).

4. Upon the fourth store, the annual license fee shall be one hundred and fifty-one dollars ($151.00).

5. Upon the fifth store, and on each store in excess of five stores, the annual license fee shall be two hundred and one dollars ($201.00).

History: En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965.

Amount of Fee

Fact that provision in store license tax law increasing license fee charged in accordance with number of stores operated might have incidental regulatory effect tending to discourage operation of multiple stores would not make act a "regulatory" rather than a "revenue measure." State ex rel. State Board of Equalization

v. Glacier Park Co., 118 M 205, 164 P 2d 366, 370.

Collateral References

Licenses⇐15 (1), 29.
53 C.J.S. Licenses §§ 30, 48.

Constitutionality of chain store tax. 73 ALR 1481; 85 ALR 736 and 112 ALR 305.

What amounts to chain store, within license or taxing statute or ordinance. 122 ALR 692.

84-2406. Annual license fees—who must procure license. Every person, firm, corporation, association, copartnership or group opening, establishing, operating or maintaining one or more stores or mercantile establishments within this state under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, who deal in petroleum products, building materials, and hardware and grain elevators, and those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent (25%) of the gross business, subject to the following restrictions: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent (75%) of the gross business is in petroleum products exclusively; those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent (25%) of the gross business; lumberyards where seventy-five per cent (75%) of the gross business is in building materials and hardware exclusively; grain elevators where seventy-five per cent (75%) of the gross business is in grains and seeds exclusively, shall pay the annual license fee prescribed in this section for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments, but shall not be required to pay the license fees prescribed in section 84-2405.

The annual license fees herein prescribed shall be paid annually.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be six dollars ($6.00).
2. Upon the second store, the annual license fee shall be eight dollars and fifty cents ($8.50).
3. Upon the third store, the annual license fee shall be sixteen dollars ($16.00).
4. Upon the fourth store, the annual license fee shall be twenty-three dollars and fifty cents ($23.50).
5. Upon the fifth store, the annual license fee shall be thirty-one dollars ($31.00).
6. Upon the sixth store, and each store in excess of six (6), the annual license fee shall be thirty-eight dollars and fifty cents ($38.50).

History: En. Sec. 6, Ch. 163, L. 1939; amd. Sec. 12, Ch. 121, L. 1965.

Collateral References

Licenses⇐15 (1), 29.
53 C.J.S. Licenses §§ 30, 48.

84-2407. Wholesale store licenses. Wholesale stores shall be taxed in all cases as individual units at the rate of thirty-eight dollars and fifty cents ($38.50) per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section 84-2405 or 84-2406, as the case may be, for

the conduct of a retail store, in addition to the wholesale license herein provided for.

History: En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965.

84-2408. Repealed—Chapter 122, Laws of 1955.

Repeal

This section (Sec. 8, Ch. 163, L. 1939), relating to the charge for licenses issued after July 1st of each year, was repealed by Sec. 3, Ch. 122, Laws 1955.

84-2409. Act to whom applicable. The provisions of this act shall be construed to apply to every person, firm, corporation, copartnership or group, either domestic or foreign, which is controlled or held in any degree with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

History: En. Sec. 9, Ch. 163, L. 1939.

84-2410. "Store" defined. The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, copartnership, or group, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale; and subject to the classification contained in sections 84-2405, 84-2406 and 84-2407.

History: En. Sec. 10, Ch. 163, L. 1939.

84-2411. Penalty. Any person, firm, corporation, association, copartnership or group who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00), and each and every day that such violation shall continue shall constitute a separate and distinct offense.

History: En. Sec. 11, Ch. 163, L. 1939.

Enforcement in National Park

Failure of legislature to especially except penal provisions of store license tax law, for which it had no jurisdiction to enforce in Glacier National Park, from applying to Glacier National Park, did not indicate legislative intent that other parts of the act should not apply to the national park. State ex rel. State Board of Equalization v. Glacier Park Co., 118 M 205, 164 P 2d 366, 370.

Collateral References

Licenses⇨40.
53 C.J.S. Licenses § 66.

84-2412. Employment of help—disposal of license money. The state board of equalization is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act, less the expenses incurred in the administration of this act, shall be paid into the state treasury, to the credit of the general fund.

History: En. Sec. 12, Ch. 163, L. 1939.

Collateral References

Licenses⇨30, 33.
53 C.J.S. Licenses §§ 49, 56.

84-2413. Repeal and saving clause. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that such repeal

shall not affect any license tax imposed, any rights accrued, any penalty incurred or any action or proceeding commenced and not terminated, under and by virtue of any provision of any act or part of an act so repealed.

History: En. Sec. 14, Ch. 163, L. 1939.

CHAPTER 25

LICENSE TAXES—TELEGRAPH COMPANIES

Section 84-2501. Telegraph license tax—not to be set out on customers' bills—amount—time for payment.
84-2502. Statement of gross income—contents—payment to accompany.
84-2503. Rules and regulations for enforcement may be adopted by board.
84-2504. Penalty for delinquency.
84-2505. Records to be kept as required by board.
84-2506. Penalty for failure to file statement and for false statements.
84-2507. Board to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien.
84-2508. Books and records to be open to inspection by board.

84-2501. (2355.1) **Telegraph license tax—not to be set out on customers' bills—amount—time for payment.** That on and after the first day of January, 1934, there is hereby levied and shall be collected an annual tax of two per cent (2%) of the gross income derived from the intrastate business on the transmission of telegraph messages over telegraph lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account, or by reason of, the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively, March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 41, Ex. L. 1933; amd. Sec. 1, Ch. 157, L. 1935.

86 C.J.S. Telegraphs, Telephones, Radio and Television § 82.

33 Am. Jur. 345, Licenses, § 25 et seq.

Collateral References

Telecommunications⊂⊃89.

84-2502. (2355.2) **Statement of gross income—contents—payment to accompany.** Each and every person, association or corporation engaged in carrying on such business in this state, shall, within thirty (30) days after the end of each quarter, beginning with the quarter ending March 31, 1934, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from business within this state including the transmission of telegraph messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telegraph messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within, this state and from those originating within, but terminating outside of, this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board

of equalization of a license tax in amount equal to two per cent (2%) of such gross income.

History: En. Sec. 2, Ch. 41, Ex. L. 1933; amd. Sec. 2, Ch. 157, L. 1935.

84-2503. (2355.3) **Rules and regulations for enforcement may be adopted by board.** The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 41, Ex. L. 1933.

84-2504. (2355.4) **Penalty for delinquency.** Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

History: En. Sec. 4, Ch. 41, Ex. L. 1933.

84-2505. (2355.5) **Records to be kept as required by board.** Each person, association or corporation shall keep a record in such form as the state board of equalization shall require showing the total gross receipts, as herein described, and such other information as the state board of equalization may require.

History: En. Sec. 5, Ch. 41, Ex. L. 1933.

84-2506. (2355.6) **Penalty for failure to file statement and for false statements.** Each person, association or corporation, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of operating a telegraph business, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars ($1,000.00), or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 6, Ch. 41, Ex. L. 1933.

84-2507. (2355.7) **Board to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien.** (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the

license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state board of equalization, of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof.

(3) When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid license taxes, penalty and interest.

History: En. Sec. 7, Ch. 41, Ex. L. 1933.

84-2508. (2355.8) **Books and records to be open to inspection by board.** The books and records of every person, association or corporation shall be open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 41, Ex. L. 1933.

CHAPTER 26

LICENSE TAXES—TELEPHONE COMPANIES

Section 84-2601. Annual tax levied on gross income of telephone business.
84-2602. Statement and payment on gross income—certain business excluded.
84-2603. Board to adopt rules.
84-2604. Penalty on delinquent tax.
84-2605. Taxpayer to keep records.
84-2606. Penalties.
84-2607. Board to levy tax on failure of taxpayer to make statement.
84-2608. Books of taxpayer open to inspection.

84-2601. Annual tax levied on gross income of telephone business. That on and after the first day of April, 1957, there is hereby levied and shall be collected an annual tax of one and one-half per cent (1½%) of the gross income, in excess of two hundred fifty dollars ($250.00) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957.

Collateral References

Telecommunications⇐89.

86 C.J.S. Telegraphs, Telephones, Radio and Television § 82.

33 Am. Jur. 345, Licenses, § 25 et seq.

84-2602. Statement and payment on gross income—certain business excluded. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending September 30, 1957, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in the amount equal to one and one-half per cent (1½%) of such gross income.

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957.

84-2603. Board to adopt rules. The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish

and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 94, L. 1937.

84-2604. Penalty on delinquent tax. Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

History: En. Sec. 4, Ch. 94, L. 1937.

84-2605. Taxpayer to keep records. Each person, association or corporation liable to tax under this act shall keep a record in such form as the state board of equalization shall require showing the total gross receipts, as herein described, and such other information as the state board of equalization may require.

History: En. Sec. 5, Ch. 94, L. 1937.

84-2606. Penalties. Each person, association or corporation, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of operating a telephone business, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars ($1,000.00), or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 6, Ch. 94, L. 1937.

84-2607. Board to levy tax on failure of taxpayer to make statement. (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%)for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to

commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state board of equalization, of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid license taxes, penalty and interest.

History: **En. Sec. 7, Ch. 94, L. 1937.**

84-2608. Books of taxpayer open to inspection. The books and records of every person, association or corporation shall be open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: **En. Sec. 8, Ch. 94, L. 1937.**

CHAPTER 27

LICENSES—GENERAL PROVISIONS CONCERNING COUNTY LICENSES

Section 84-2701. County clerk shall prepare, print and furnish licenses to the county treasurer.
84-2702. When license to be procured.
84-2703. Prosecution of persons failing to take out license.
84-2704. County treasurer—inquiry as to persons liable to procure licenses.
84-2705. Proof on trial.
84-2706. Settlements, when made.
84-2707. Lien of license.
84-2708. Disposal of license moneys.

84-2701. (2410) **County clerk shall prepare, print and furnish licenses to the county treasurer.** The county clerk shall prepare and have printed such blank licenses as may be required and after affixing his official seal thereto, he shall deliver same to the county treasurer. At the time of such delivery, he shall charge the county treasurer therewith by appropriate entry in his records showing the amount, numbers and classes of licenses so furnished. As licenses are issued and accounted for by the county treasurer,

the county clerk shall credit such account with all licenses so issued and accounted for, so that the account will at all times show the number of licenses furnished the treasurer, their numbers, the number issued or canceled and the number remaining in the hands of the county treasurer.

History: En. Sec. 4040, Pol. C. 1895; re-en. Sec. 2746, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1909; re-en. Sec. 2410, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1933. Cal. Pol. C. Sec. 3356.

References

State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

Collateral References

Licenses⇨23.
53 C.J.S. Licenses § 40.

84-2702. (2413) **When license to be procured.** A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city, or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person, in addition to the license provided by this chapter, also procures the license required by the ordinance or orders of such city or town.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R. C. M. 1921. Cal. Pol. C. Sec. 3359.

Condition Precedent

This section requires that a license shall be obtained as a condition precedent to the right to do business. State v. Northern Pacific Express Co., 27 M 419, 421, 71 P 404.

References

State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

Collateral References

Licenses⇨36, 39.
53 C.J.S. Licenses §§ 13, 59.

84-2703. (2414) **Prosecution of persons failing to take out license.** Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the county treasurer must direct suit, in the name of the state of Montana as plaintiff, to be brought for the recovery of the license tax; and in such case either the treasurer or the county attorney must make the necessary affidavit for the writ of attachment, and such writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant. It shall be the duty of the board of county commissioners or the state examiner, when examining the treasurer's report, to investigate if any persons are doing business in the county without a license, or if the amount of the license is sufficient. In either event the treasurer shall be officially notified, and thereafter shall be personally liable for such license or increase unless he promptly proceeds under this section or under section 84-2707 to collect the same.

History: Ap. p. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R. C. M. 1921. Cal. Pol. C. Sec. 3360.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

Construction of Statute

The words "any person required to take out a license" mean any person engaged in a profession, trade, or occupation for which a license tax is required and a person engaged in any such business, upon the payment of the required fee, can demand a license as a matter of right. In the enactment of the section, the legislature intended nothing more than to provide means for the collection of a license fee from one entitled to a license as a matter of right upon payment of the fee. State ex rel. Carter v. Kall, 53 M 162, 166, 162 P 385.

Collateral References

Licenses⇨41.
53 C.J.S. Licenses § 55.

84-2704. (2415) **County treasurer—inquiry as to persons liable to procure licenses.** The county treasurer must make diligent inquiry as to all persons in his county liable to pay license as provided in this chapter, and must require, where the rate of license is divided into classes, each person to state, under oath or affirmation, the probable amount of business which he or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is the president, secretary, or managing agent, will do in the next succeeding three months; and thereupon such person, agent, president, secretary or other officer must procure a license from the county treasurer for the term desired, and the class for which such party is liable to pay; and in all cases where an underestimate has been made by the party applying, the party making such underestimate, or the company he represented, is required to pay for a license for the next quarter double the sum otherwise required.

History: En. Sec. 4045, Pol. C. 1895; re-en. Sec. 2751, Rev. C. 1907; re-en. Sec. 2415, R. C. M. 1921. Cal. Pol. C. Sec. 3361.

Collateral References

Licenses⇨22.
53 C.J.S. Licenses § 39.

84-2705. (2416) **Proof on trial.** Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with damages and costs.

History: En. Sec. 4046, Pol. C. 1895; re-en. Sec. 2752, Rev. C. 1907; re-en. Sec. 2416, R. C. M. 1921. Cal. Pol. C. Sec. 3362.

References

State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

Collateral References

Licenses⇨32 (2).
53 C.J.S. Licenses § 52.

84-2706. (2417) **Settlements, when made.** On the first Monday in each month the county treasurer must return to the county clerk all licenses unsold, and show that he has paid into the county treasury all moneys collected for licenses sold during the preceding month.

History: En. Sec. 4047, Pol. C. 1895; re-en. Sec. 2753, Rev. C. 1907; re-en. Sec. 2417, R. C. M. 1921. Cal. Pol. C. Sec. 3363.

Collateral References

Licenses⇨21.
53 C.J.S. Licenses § 37.

84-2707. (2419) **Lien of license.** All property held or used in any trade, occupation, or profession, for which a license is required by the provisions of this chapter, is liable for such license and subject to a lien for the amount thereof, which lien has precedence of any other lien, claim, or other demand; and if any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property, or any other property belonging to such person, and sell the same in the manner provided in sections 84-4204 to 84-4208.

History: En. Sec. 4049, Pol. C. 1895; re-en. Sec. 2755, Rev. C. 1907; re-en. Sec. 2419, R. C. M. 1921.

Priority of Lien

Property which is held or used in any trade, occupation, or profession for which a license is required, is liable for license, and the lien for the amount of license has precedence over any mortgage upon the same. Burfiend v. Hamilton, 20 M 343, 346, 51 P 161.

References

State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

Collateral References

Licenses⊂⊃31.
53 C.J.S. Licenses § 50.
33 Am. Jur. 391, Licenses, § 79.

DECISIONS UNDER FORMER LAW

Validity of Similar Section

Section 816 of the Revised Statutes of 1879, a statute similar to this section, which authorized the summary seizure and sale of property belonging to another, but in use by a person from whom a license was due, and creating a lien thereon, was held unconstitutional under due process of law clauses of the federal constitution. Chauvin v. Valiton, 8 M 451, 457, 20 P 658.

84-2708. (2420) **Disposal of license moneys.** All moneys collected for licenses must be paid into the treasury of the county in which the same are collected. The county treasurer shall retain fifty per cent thereof for the use of the county, he shall pay over forty-five per cent thereof to the state treasurer for the use of the general fund of the state and he shall pay over five per cent thereof to the state treasurer for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control.

History: En. Sec. 1, Ch. 76, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921; re-en. Sec. 2420, R. C. M. 1921; amd. Sec. 104, Ch. 147, L. 1963.

Collateral References

Licenses⊂⊃33.
53 C.J.S. Licenses § 56.

CHAPTER 28

LICENSES—FURNISHING TRADING STAMPS WITH SALE OF MERCHANDISE

84-2801 to 84-2804. (2430 to 2433) **Repealed.**

Repeal

These sections (Secs. 1 to 4, Ch. 17, Laws 1917), requiring a license for the giving of bonus or trading stamps, were repealed, as Secs. 2430 to 2433, Revised Codes 1935, by Sec. 1, Ch. 56, Laws 1949.

84-2805 to 84-2812. Unconstitutional.

Unconstitutionality

These sections (Secs. 1 to 8, Ch. 153, Laws 1961), requiring a license for the issuance of trading stamps, were declared unconstitutional in Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

CHAPTER 29

LICENSES—HUCKSTERS

Section 84-2901. "Huckster" defined.
84-2902. Amount of license.
84-2903. Application for license.
84-2904. Issuance of license—filing of application—endorsement.
84-2905. Penalty for failure to exhibit license.
84-2906. Punishment for doing business without license.
84-2907. Interpretation of provisions of law.

84-2901. (2429.9) **"Huckster" defined.** Any person engaged or employed in the business of buying and selling farm products who disposes of such products by selling them at retail to consumers by going from house to house, is within the meaning of this act, a huckster.

History: En. Sec. 1, Ch. 183, L. 1925.

Collateral References

Hawkers and Peddlers⇐3 (2).
39 C.J.S. Hawkers and Peddlers § 1 et seq.

40 Am. Jur. 938, Peddlers, Transient Dealers and Solicitors, § 30 et seq.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

84-2902. (2429.10) **Amount of license.** Every huckster desiring to do business in any county of this state, must, before commencing such business, pay to the county treasurer of such county, the sum of fifteen dollars ($15.00) for a license to conduct such business for a period of six months from the date such license is issued.

History: En. Sec. 2, Ch. 183, L. 1925; amd. Sec. 1, Ch. 124, L. 1937.

Collateral References

Licenses⇐29.
53 C.J.S. Licenses § 48.

84-2903. (2429.11) **Application for license.** Every huckster desiring to do business in any county of this state, must before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer an application in writing, which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. Whether acting as principal, agent or employee.
4. If acting as agent or employee, the name and place of business of his principal or employer.

At the time of filing the application, such huckster must accompany the application above provided with the sum specified in the preceding section as a license fee.

History: En. Sec. 3, Ch. 183, L. 1925.

Cross-Reference

Cities may license peddlers, sec. 11-918.

Collateral References

Hawkers and Peddlers⇐4.
39 C.J.S. Hawkers and Peddlers § 7.

84-2904. (2429.12) **Issuance of license—filing of application—endorsement.** Upon filing of the application specified in section 84-2903 and upon the payment to the county treasurer of the sum specified in section 84-2902, the county treasurer shall issue and deliver to the applicant, a license to carry on the business of a huckster for a period of six months from the

date of such license. Such license shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable."

The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: **En. Sec. 4, Ch. 183, L. 1925.**

84-2905. (2429.13) **Penalty for failure to exhibit license.** Every such huckster doing business under the provisions of this act must upon demand of any interested person exhibit his license and permit the same to then and there be read by the person making such demand; and any such huckster who shall refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than ten dollars ($10.00) nor more than twenty-five dollars ($25.00).

History: **En. Sec. 5, Ch. 183, L. 1925.**

39 C.J.S. Hawkers and Peddlers §§ 10, 11.

Collateral References

Hawkers and Peddlers⚿6, 7.

84-2906. (2429.14) **Punishment for doing business without license.** Every huckster as herein defined, doing business without first obtaining a license as required by this act, is guilty of a misdemeanor, and shall be punished accordingly, as provided in Title 94.

History: **En. Sec. 6, Ch. 183, L. 1925.**

Cross-Reference

Carrying on business without a license, penalty, sec. 94-1511.

84-2907. (2429.15) **Interpretation of provisions of law.** Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act. Nothing in this act shall be construed so as in any manner to impair, abridge or interfere with, the right of a grower or producer of farm products to dispose of such products grown or produced by him.

History: **En. Sec. 7, Ch. 183, L. 1925.**

Collateral References

Hawkers and Peddlers⚿1.
39 C.J.S. Hawkers and Peddlers § 6.

CHAPTER 30

LICENSES—ITINERANT MERCHANTS

Section 84-3001. "Itinerant merchant" defined.
84-3002. "Established place of business" defined.
84-3003. Persons not included.
84-3004. Who shall be exempt—affidavit.
84-3005. Itinerant merchant license required.
84-3006. Application for license—fee.
84-3007. Surety bond.
84-3008. License, issuance, form and display of.
84-3009. License nontransferable.
84-3010. Revocation of license.

84-3011. Administrative rules.
84-3012. Offending vehicle to be kept in custody.
84-3013. Disposition of license fees.
84-3014. Construction of act.
84-3015. Penalty.

84-3001. "Itinerant merchant" defined. For the purpose of this act, "itinerant merchant" shall mean any person who buys, or offers to buy, or sells, or offers to sell, in this state, at wholesale or retail any produce as defined by section 84-3403, who does not hold a license under the provisions of chapter 34 of this Title, and transports the same in this state by use of a motor vehicle, or by any other method of transportation, except as herein otherwise provided, or who has not secured the permit of exemption herein provided.

History: En. Sec. 1, Ch. 214, L. 1939.

Collateral References

Licenses⇐16 (2).

53 C.J.S. Licenses § 30.

40 Am. Jur. 938, Peddlers, Transient Dealers, and Solicitors, § 30 et seq.

84-3002. "Established place of business" defined. "Established place of business," for the purpose of this act, shall mean any permanent warehouse, building, or structure, at which a permanent business is carried on as such in good faith and not for the purpose of evading this act, and at which stocks of the property being transported are produced, stored or kept in quantities reasonably adequate for, and usually carried for, the requirements of such business, and which is recognized, licensed and taxed as a permanent business at such place, and shall not mean residences, tents, temporary stands or other temporary quarters, any railway car, nor permanent quarters occupied pursuant to any temporary arrangement.

History: En. Sec. 2, Ch. 214, L. 1939.

84-3003. Persons not included. The term "itinerant merchant" shall not mean or include the following:

(1) A person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises, when the entire course of such transportation extends not more than one hundred fifty (150) miles from his residence, whether such residence be within or without this state.

(2) Any person handling produce grown by him as herein provided who shall have secured from the commissioner of agriculture before offering any such produce for sale, a permit of exemption. Such permit shall be issued by the commissioner of agriculture upon application and payment of a fee of one dollar ($1.00), provided the applicant shall, in the discretion of the commissioner of agriculture, be able to satisfactorily show that he will sell, or offer for sale, only produce of his own production; and when and if issued shall permit the sale of only such produce, and shall be forfeited at any time the holder of such permit of exemption shall sell, or offer to sell any produce not of his own production.

(3) A person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when such transportation is incident to a business conducted by him at an established place

of business operated by him, either within or without this state, and when said property is being transported to or from an established place of business, operated by him in this state.

(4) A person transporting property for his own consumption or use and not for sale.

History: En. Sec. 3, Ch. 214, L. 1939.

NOTE.—The title "commissioner of agriculture, labor and industry" was changed to "commissioner of agriculture" to conform to later enactment. See sec. 3-101.1.

84-3004. Who shall be exempt—affidavit. No person shall be exempt from the requirements of this act unless he or the driver of the motor vehicle upon which his property is being transported, shall, upon the request of any peace officer or any person charged with the enforcement of this act, including all employees of the department of agriculture, labor and industry, execute an affidavit containing such facts as the commissioner of agriculture may, in his discretion, require, and deliver the same to said peace officer or such employee. Such affidavit must clearly show that the person claiming the exemption is entitled to one or more of the exemptions provided in this act.

History: En. Sec. 4, Ch. 214, L. 1939.

NOTE.—The department of agriculture, labor and industry mentioned in this section has been divided into two departments: the department of agriculture and the department of labor and industry. See sec. 3-101.1.

84-3005. Itinerant merchant license required. No person shall engage in business as an itinerant merchant, as defined by this act, without obtaining from the commissioner of agriculture the license herein required.

History: En. Sec. 5, Ch. 214, L. 1939.

84-3006. Application for license—fee. An application for a license to engage in business as an itinerant merchant shall be made to the commissioner of the department of agriculture upon forms to be prepared by him.

A separate application and license shall be required for each motor vehicle to be operated. Such application shall contain such facts as the commissioner of agriculture shall require. The fee for each license shall be one hundred dollars ($100.00) for the calendar year in which it is issued, and each license shall expire at the end of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant.

History: En. Sec. 6, Ch. 214, L. 1939.

NOTE.—The title "commissioner of agriculture, labor and industry" was changed to "commissioner of agriculture" to conform to later enactment. See sec. 3-101.1.

84-3007. Surety bond. No license shall be issued until the applicant shall have filed with each application, and the same has been approved by the commissioner of agriculture, a surety bond issued by a company authorized to do business in the state in the penal sum of not less than one thousand dollars ($1,000), in such form as may be prescribed by the commissioner of agriculture conditioned upon the delivery of honest weights, measures, or grades, accurate representation as to quality or class of produce, the actual payment of checks, drafts or other obligations delivered by

the itinerant merchant in exchange for the purchase of such produce, and the payment of all obligations incurred by him for the purchase of the same.

History: En. Sec. 7, Ch. 214, L. 1939.

84-3008. License, issuance, form and display of. Upon the approval of the application and bond and upon compliance with the terms of this act, the commissioner of agriculture shall issue to the applicant a license as an itinerant merchant in such form as the commissioner of agriculture may prescribe. Such license shall at all times be carried by the driver of the motor vehicle described and shall at all times be subject to inspection by any person.

History: En. Sec. 8, Ch. 214, L. 1939.

NOTE.—The title "commissioner of agriculture, labor and industry" was changed to "commissioner of agriculture" to conform to later enactment. See sec. 3-101.1.

84-3009. License nontransferable. No license issued pursuant to this act may be sold or transferred, and no license may be transferred from one vehicle to another, without the written consent of the commissioner of agriculture.

History: En. Sec. 9, Ch. 214, L. 1939.

84-3010. Revocation of license. Upon such notice and hearing as the commissioner of agriculture may deem proper, he may revoke any license issued under the provisions of this act for failure to comply with any of the laws of this state.

History: En. Sec. 10, Ch. 214, L. 1939.

84-3011. Administrative rules. The commissioner of agriculture shall make and enforce such rules for the administration of this act as he may deem necessary and proper.

History: En. Sec. 11, Ch. 214, L. 1939.

NOTE.—The title "commissioner of agriculture, labor and industry" was changed to "commissioner of agriculture" to conform to later enactment. See sec. 3-101.1.

84-3012. Offending vehicle to be kept in custody. Any motor vehicle operated in violation of this act shall be kept in the custody of any person authorized to enforce any of the laws of this state, or in the custody of any person authorized to enforce this act including all employees of the department of agriculture, labor and industry, and shall not be operated except under his or their authority and solely for the purpose of taking it to the nearest convenient place of custody, until the provisions of this act have been complied with.

History: En. Sec. 12, Ch. 214, L. 1939.

NOTE.—The department of agriculture, labor and industry mentioned in this section has been divided into two departments: the department of agriculture and the department of labor and industry. See sec. 3-101.1.

84-3013. Disposition of license fees. All sums received from license fees under this act by the commissioner of agriculture, shall be by him deposited with the state treasurer, and shall be used to defray the cost of administration and enforcement of this act.

History: En. Sec. 13, Ch. 214, L. 1939.

84-3014. Construction of act. Nothing in this act shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants. This act shall not be construed as repealing or amending any of the provisions of chapter 34 of this Title.

History: En. Sec. 14, Ch. 214, L. 1939.

84-3015. Penalty. Any person violating any provision of this act shall be guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars ($25.00) and not more than two hundred dollars ($200.00).

History: En. Sec. 15, Ch. 214, L. 1939.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

CHAPTER 31

LICENSES—ITINERANT VENDORS

Section 84-3101. License of itinerant vendor of drugs, etc.
84-3102. Definition of terms.
84-3103. Amount of license.
84-3104. Application for license.
84-3105. Bond required if deposit taken on orders for future delivery.
84-3106. Issuance of license—filing of application—endorsement.
84-3107. Penalty for failure to exhibit license.
84-3108. Punishment for doing business without license.
84-3109. Interpretation of provisions of law.

84-3101. (2429) **License of itinerant vendor of drugs, etc.** Any itinerant vendor of any drug, poison, ointment, or appliance of any kind intended for treatment of any disease or injury, who shall, by writing or printing, or any other method, publicly profess to cure or treat disease or injury, or deformity, by any drug, nostrum, or manipulation or other expedient, shall pay a license of fifty dollars per annum in each county in which he may offer to do business, or according to the usual laws in force for that purpose.

History: En. Sec. 655, Pol. C. 1895; re-en. Sec. 1637, Rev. C. 1907; re-en. Sec. 2429, R. C. M. 1921.

Cross-Reference

Cities may license peddlers, sec. 11-918.

Collateral References

Licenses⊂⇒15 (2), 29.

53 C.J.S. Licenses §§ 30, 48.

40 Am. Jur. 938, Peddlers, Transient Dealers and Solicitors, § 30 et seq.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

84-3102. (2429.16) **Definition of terms.** Any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment, and there soliciting, selling, or offering to sell, or exhibiting for sale, by sample, by catalogue, or otherwise, or taking orders for future delivery of any goods, wares or merchandise, or for services to be performed in the future, is within the meaning of this act, an "itinerant vendor"; a "consumer" is "one who uses, and by using, destroys the value of the article purchased." This act shall in no way affect any person, firm, copartner-

ship or corporation with a commercial rating and who maintain a permanent place of business in the state of Montana.

History: En. Sec. 1, Ch. 184, L. 1925.

NOTE.—Sections 84-3102 to 84-3109 (2429.16 to 2429.23) held unconstitutional as violating section 8, article I of the United States constitution in so far as they attempt to impose a license for persons selling or seeking to sell the goods of a nonresident of Montana prior to the introduction of such goods in the state. Opinions of Attorney General, Vol. 11, p. 141.

Collateral References

Licenses⇐15 (2).
53 C.J.S. Licenses § 30.

84-3103. (2429.17) **Amount of license.** For the purpose of defraying the expenses of regulation under this act, every itinerant vendor desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of fifteen ($15.00) dollars for a license to conduct such business for a period of one (1) year from the date such license is issued.

History: En. Sec. 2, Ch. 184, L. 1925; amd. Sec. 1, Ch. 109, L. 1937.

Collateral References

Licenses⇐29.
53 C.J.S. Licenses § 48.

40 Am. Jur. 938, Peddlers, Transient Dealers, and Solicitors, § 30 et seq.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

84-3104. (2429.18) **Application for license.** Every itinerant vendor desiring to do business in any county of this state, must before commencing such business file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing subscribed and sworn to by such applicant before an officer in this state authorized to take oaths, which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. His local headquarters, if any.
4. Time of his arrival in the county.
5. County from which last license, if any, received.
6. Whether acting as principal, agent or employee.
7. If acting as agent or employee, the name and place of business of his principal or employer.
8. If an agent, as part of application, principal's acknowledgment of such agency must accompany application.
9. Brief descriptive list of articles to be offered for sale, or service to be performed.
10. Whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.

At the time of filing the application, such itinerant vendor must accompany the application above provided with the sum specified in the preceding section as a license fee.

History: En. Sec. 3, Ch. 184, L. 1925.

Collateral References

Licenses⇐22.
53 C.J.S. Licenses § 39.

84-3105. (2429.19) **Bond required if deposit taken on orders for future delivery.** Every application made by an itinerant vendor taking orders for

future delivery and collecting advance payments, deposits or guarantees thereon, under the terms of the preceding sections, shall be accompanied by a bond in the penal sum of $250.00 to said county treasurer, executed by a surety company licensed to do business in this state, or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county (or in lieu thereof a cash bond of equal amount) and to be approved by said county treasurer, conditioned upon making of final delivery of the goods ordered or the services to be rendered, in accordance with the terms of such order, or failing therein, that the moneys advanced by his customers be refunded. Any person aggrieved by the action or misrepresentation of any such itinerant vendor shall have a right of action on the bond for the recovery of his money advanced or damages and costs. Such bond shall remain in full force and effect for a period of six months after the expiration of any such license, and shall be held to assure only business transacted under the authority of the license issued pursuant to the application which such bond accompanied.

History: En. Sec. 4, Ch. 184, L. 1925.

Collateral References

Licenses⇐26.
53 C.J.S. Licenses § 36.

84-3106. (2429.20) **Issuance of license—filing of application—endorsement.** Upon filing of the application prescribed in section 84-3104, or the filing of such application and the bond prescribed in section 84-3105, in proper form, and upon the payment to the county treasurer of the sum required by section 84-3103, the county treasurer shall issue and deliver to the applicant, a license to carry on the business described in such application in the county in which such license is so issued, for a period of ninety days from the date of such license. Such license shall be nontransferable and shall have printed across the face thereof in bold type, the words "not transferable."

The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county, who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of the applicant and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 184, L. 1925.

Collateral References

Licenses⇐22, 37.
53 C.J.S. Licenses §§ 39, 45.

84-3107. (2429.21) **Penalty for failure to exhibit license.** Every such itinerant vendor doing business under the provisions of this act must upon demand of any person exhibit his license and permit the same to then and there be read by the person making such demand; and any such itinerant vendor who shall willfully refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than one hundred ($100.00) dollars nor more than two hundred fifty ($250.00) dollars for each offense.

History: En. Sec. 6, Ch. 184, L. 1925; amd. Sec. 2, Ch. 109, L. 1937.

Collateral References

Licenses⇐40.
53 C.J.S. Licenses § 66 et seq.

84-3108. (2429.22) **Punishment for doing business without license.** Every itinerant vendor as herein defined, doing business without first obtaining a license as required by this act is guilty of a misdemeanor, and shall be punished accordingly.

History: En. Sec. 7, Ch. 184, L. 1925.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

Collateral References

Licenses⊂⊃40.
53 C.J.S. Licenses § 66.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity. 147 ALR 142.

84-3109. (2429.23) **Interpretation of provisions of law.** Nothing in this act contained, is intended to operate so as to interfere with the power of the United States to regulate commerce between the states as such power is defined by the supreme court of the United States. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act provided that such municipality shall not impose any license fees in excess of twice the amount provided herein for county license fees.

History: En. Sec. 8, Ch. 184, L. 1925.

CHAPTER 32

LICENSES—MISCELLANEOUS COUNTY

Section 84-3201. Billiard tables—pawnbrokers—theaters—intelligence offices—shooting galleries—circuses.
84-3202. Railways acting as warehouses.
84-3203. License of manufacturer of soft drinks.
84-3204. Keeper of skating rink or merry-go-round.
84-3205. Moving picture shows—amount of license.
84-3206. Laundries.
84-3207. Architects, builders, contractors, manufacturers.
84-3208. Manufacturers of malt.
84-3209. Penalty for failure to procure license.

84-3201. (2434) **Billiard tables — pawnbrokers — theaters — intelligence offices—shooting galleries—circuses.** License must be obtained for the purposes hereinafter named, for which the county treasurer must require payment as follows:

1. Each proprietor of a billiard, pool, or bagatelle table not kept exclusively for family use, for each table three dollars and seventy cents ($3.70) per quarter; and for a bowling alley, five dollars ($5.00) per quarter for each alley; but no license must be granted for a term less than three months.

2. The manager or lessee of every theater (not a variety or concert theater) one hundred dollars ($100.00) per annum; except that in towns of a population of three thousand five hundred (3500) or less, in cases where no monthly license is paid, a license of two dollars ($2.00) for each single performance must be paid; for each single exhibition of opera or concert singer (not exhibited in any theater where a yearly license is paid), three dollars ($3.00); for minstrels, legerdemain, or shows not herein provided

for, five dollars ($5.00) for each single performance (when not in a theater where a yearly license is paid); for each variety or concert theater, whether an admittance fee is charged or not, seventy-five dollars ($75.00) per month; for every traveling show exhibiting in tents, open air or other than a regular theater, such as circuses, menageries, side shows, carnivals, wild west shows, animal shows or tent shows, traveling in less than twenty-five (25) railroad cars, seventy-five dollars ($75.00) per day, over twenty-five (25) railroad cars, two hundred dollars ($200.00) per day, traveling on highways in ten (10) trucks or less, twenty-five dollars ($25.00) per day, eleven (11) to twenty-five (25) trucks, fifty dollars ($50.00) per day, more than twenty-five (25) trucks, seventy-five dollars ($75.00) per day; but no license must be collected from any amateur exhibition or concert for school or charitable or religious purposes, from any county, district or state agricultural fairs, rodeo associations, or from any veterans' organizations not conducted for private gain.

Provided the county treasurer shall not issue any license for circuses, side shows, carnivals, menageries, wild west shows, animal shows or tent shows to be held or performed within a period of thirty days just prior to or during the holding of any local, county, district or state fair or rodeo without first obtaining the written consent of the board of county commissioners of the county where application is made for such licenses to operate such shows.

3. For each pawnbroker, fifty-five dollars ($55.00) per quarter.

4. For each keeper of an intelligence office, ten dollars ($10.00) per quarter.

5. For each keeper of a shooting gallery, for gain, fifteen dollars ($15.00) per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953. Cal. Pol. C. Sec. 3380.

Compiler's Note

Subsection 6 of Sec. 1, Ch. 66, Laws 1953 was not included in the above section by the compiler since it was a repealing clause. It read as follows: "All acts and parts of acts in conflict herewith are hereby repealed."

Cross-References

Carrying on business without license, penalty, sec. 94-1511.

Cities may license circuses, sec. 11-918.

Cities may license pawnbrokers, sec. 11-918.

Cities may license pool tables and bowling alleys, sec. 11-918.

Cities may license shooting galleries, sec. 11-918.

Pawnbroker's license, secs. 66-1601, 94-3701.

References

Equitable Life Assurance Co. v. Hart, 55 M 76, 84, 173 P 1062; State ex rel. Griffin v. Greene, 104 M 460, 464, 67 P 2d 995.

Collateral References

Liens⚿11 (1), 17 (2), 29; Pawnbrokers and Money Lenders⚿4; Theaters and Shows⚿3.

53 C.J.S. Licenses §§ 30, 48; 70 C.J.S. Pawnbrokers § 3; 86 C.J.S. Theaters and Shows § 17.

40 Am. Jur. 695, Pawnbrokers and Money Lenders, § 7.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract. 30 ALR 834; 42 ALR 1226 and 118 ALR 646.

Necessity of dealer's license to authorize sale of articles taken as security or to satisfy a debt. 36 ALR 684.

Validity of license tax or fee on show or place of amusement. 58 ALR 1340 and 111 ALR 778.

Commercial agency's failure to procure license as affecting enforceability of contract. 118 ALR 661.

Refusal of amusement license or permit as subject to judicial review. 124 ALR 247.

Loan broker's right to commission on transactions consummated after termination of employment. 27 ALR 2d 1348.

84-3202. (2435) **Railways acting as warehouses.** Each railway company acting in the capacity of a warehouse for the purpose of storing and distributing goods, except any other than the capacity of common carriers, shall pay a license of ten dollars ($10.00) per quarter in each county in which said business may be carried on.

History: En. Sec. 1, Ch. 22, L. 1907; Sec. 2763, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1917; re-en. Sec. 2435, R. C. M. 1921; amd. Sec. 5, Ch. 28, Ex. L. 1933.

Collateral References

Warehousemen⊂⇒6.

93 C.J.S. Warehousemen and Safe Depositaries § 5.

84-3203. (2436) **License of manufacturer of soft drinks.** Every manufacturer of nonintoxicating beverages, pop, soda waters, or other light drinks put up in bottles or other containers, in all cities having a population of ten thousand people or over, shall pay a license of sixty dollars semiannually; in all cities or towns of more than five thousand and less than ten thousand in population, shall pay a license of forty dollars semiannually; and in all cities or towns with a population of less than five thousand shall pay a license of twenty-five dollars semiannually.

History: En. Sec. 3, p. 199, L. 1897; re-en. Sec. 2770, Rev. C. 1907; amd. Sec. 1, Ch. 26, L. 1921; re-en. Sec. 2436, R. C. M. 1921.

References

State v. Courtney, 27 M 378, 382, 71 P 308; Equitable Life Assurance Co. v. Hart, 55 M 76, 81, 173 P 1062; State v. Yale Oil Corp. of South Dakota, 88 M 506, 510, 295 P 255.

Collateral References

Licenses⊂⇒12, 29.

53 C.J.S. Licenses §§ 40, 48.

Power to require license to operate factory or workshop. 38 ALR 1538.

84-3204. (2438) **Keeper of skating rink or merry-go-round.** Every keeper of a roller or ice-skating rink or merry-go-round in cities or towns of three thousand people and upward must procure a license and pay therefor the sum of fifteen dollars per quarter; and in towns of one thousand and less than three thousand people, ten dollars per quarter; and in towns of less than one thousand inhabitants, five dollars per quarter.

History: En. Sec. 4077, Pol. C. 1895; re-en. Sec. 2775, Rev. C. 1907; re-en. Sec. 2438, R. C. M. 1921; amd. Sec. 1, Ch. 66, L. 1945.

Collateral References

Theaters and Shows⊂⇒3.

86 C.J.S. Theaters and Shows § 17.

Validity of license tax or fee on place of amusement. 58 ALR 1340 and 111 ALR 778.

Refusal of amusement license or permit as subject to judicial review. 124 ALR 247.

84-3205. (2439) **Moving picture shows—amount of license.** No license shall be required for the operation or exhibition of moving picture shows in any city, town, or village where the population does not exceed one thousand five hundred. In all other cities the license shall be twenty-five dollars per year.

History: En. Sec. 1, Ch. 81, L. 1913; re-en. Sec. 2439, R. C. M. 1921.

References

Colwell v. City of Great Falls, 117 M 126, 143, 157 P 2d 1013.

Collateral References

Theaters and Shows⇨3.

86 C.J.S. Theaters and Shows § 17.

4 Am. Jur. 2d 150, Amusements and Exhibitions, §§ 29, 30.

Validity of license tax or fee on show or place of amusement. 58 ALR 1340 and 111 ALR 778.

Refusal of amusement license or permit as subject to judicial review. 124 ALR 247.

DECISIONS UNDER FORMER LAW

Constitutionality

Chapter 91, Laws 1937, providing for the licensing of moving picture theaters, was not open to the constitutional objection contained in section 19, article V of the Montana constitution, that as finally passed it was so altered or amended as to change its original purpose. State ex rel. Griffin v. Greene, 104 M 460, 462, 465, 67 P 2d 995.

A license tax imposed for the privilege of doing business is not subject to the uniformity provisions of sections 1 and 11, article XII of the Montana constitution. State ex rel. Griffin v. Greene, 104 M 460, 463, 67 P 2d 995.

Chapter 91, Laws 1937, which provided for the licensing of moving picture theaters, did not violate the equal protection and due process of law clause of the fourteenth amendment to the federal constitution. State ex rel. Griffin v. Greene, 104 M 460, 465, 67 P 2d 995.

Unlawful Discrimination

Chapter 91, Laws 1937, operating alike upon all operators of moving picture theaters, and allowing all an exemption of $3,000 gross income from the license tax imposed, was not subject to the claim of unlawful discrimination, exclusion of vaudeville from statute not rendering classification arbitrary. State ex rel. Griffin v. Greene, 104 M 460, 463, 67 P 2d 995.

84-3206. (2440) **Laundries.** Every person engaged in laundry business, other than the steam-laundry business, shall pay a license of ten dollars per quarter; provided, that this act shall not apply to the women engaged in the laundry business, where not more than two women are engaged or employed or kept at work, and said license shall be for one place of business only.

History: En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907; re-en. Sec. 2440, R. C. M. 1921.

Constitutionality

License tax upon laundries does not violate section 11, article XII of the Montana constitution requiring uniformity in the assessment and levy of taxes. State ex rel. Sam Toi v. French, 17 M 54, 41 P 1078; State v. Camp Sing, 18 M 128, 44 P 516.

The legislature is not required to tax all occupations equally or uniformly; hence it had power to single out proprietors of hand laundries and compel them to pay a license; and so long as the law was uniform as to all persons operating such laundries, there was no denial of the equal protection of the laws. Quong Wing v. Kirkendall, 39 M 64, 69, 101 P 250, affirmed 223 U S 59, 63, 56 L Ed 350, 32 S Ct 192.

Assuming that this section classifies laundries for license purposes, into steam laundries and laundries operated by hand, such classification is not arbitrary or unreasonable. Quong Wing v. Kirkendall, 39 M 64, 69, 101 P 250, affirmed 223 U S 59, 63, 56 L Ed 350, 32 S Ct 192.

This section is not, because of the exemptions therein contained, an unconstitutional denial of the equal protection of the laws. Quong Wing v. Kirkendall, 223 U S 59, 56 L Ed 350, 32 S Ct 192.

References

Quong Wing v. Kirkendall, 47 M 16, 17, 130 P 2; Lindeen v. Montana Liquor Control Board, 122 M 549, 207 P 2d 977, 980.

Collateral References

Licenses⇨11 (1), 29.

53 C.J.S. Licenses §§ 30, 48.

33 Am. Jur. 359, Licenses, § 34.

Privilege tax in respect of business involving continuous passage and repassage over state lines of laundry or other articles for use and the return of same or similar articles to user. 153 ALR 830.

84-3207. (2441) **Architects, builders, contractors, manufacturers.** Every architect, builder, contractor, or manufacturer, doing a business of more than fifteen thousand dollars per year, must pay a license of ten dollars per quarter.

History: En. Sec. 4082, Pol. C. 1895; re-en. Sec. 2778, Rev. C. 1907; re-en. Sec. 2441, R. C. M. 1921.

Constitutionality

The tax imposed by this section upon a manufacturer is the license or occupation tax provided for by the last sentence of section 1, article XII of the constitution, and is not controlled by the uniformity clause contained in section 11 of the same article; hence such license tax may be graduated according to the amount of business done and is not open to attack as being discriminatory because one doing a business of $15,000 or less a year is relieved from the payment thereof. State v. Hennessy Co., 71 M 301, 303 et seq., 230 P 64.

Bakery

A company conducting a bakery is a manufacturer within the meaning of this section, providing for the payment of a license of ten dollars per quarter by every manufacturer doing a business of more than $15,000 per year; a manufacturer being one who produces articles for use from either raw or manufactured materials by giving to them new forms, qualities, properties or combinations. State v. Hennessy Co., 71 M 301, 230 P 64.

Merchant Tailor

A merchant tailor is not a manufacturer within the meaning of this section. State v. Johnson, 20 M 367, 369, 51 P 820.

References

Equitable Life Assurance Co. v. Hart, 55 M 76, 84, 173 P 1062.

Collateral References

Licenses⇐11 (4), (5), 12, 29.
53 C.J.S. Licenses §§ 30, 48.
5 Am. Jur. 2d 662, Architects, § 2.

Architect's failure to procure license as affecting enforceability of contract. 118 ALR 651.

84-3208. (2442) **Manufacturers of malt.** Every manufacturer of malt, when not engaged in the manufacture of malt liquors in the state of Montana, must pay a license of one hundred dollars per annum.

History: En. Sec. 5, p. 200, L. 1897; re-en. Sec. 2779, Rev. C. 1907; re-en. Sec. 2442, R. C. M. 1921.

References

State v. Courtney, 27 M 378, 382, 71 P 308; Equitable Life Assurance Co. v. Hart, 55 M 76, 84, 173 P 1062.

Collateral References

Licenses⇐12, 29.
53 C.J.S. Licenses §§ 30, 48.

84-3209. (2443) **Penalty for failure to procure license.** Every person who commences or carries on a business, trade, profession, or calling, for the transaction or carrying on of which a license is required by the provisions of any of the license laws of the state of Montana, without taking out or procuring such license is guilty of a misdemeanor, and shall, unless specific punishment is prescribed by some other law of this state, be punishable as in the case of other misdemeanors and in addition thereto shall be liable to a penalty of ten per cent of the amount of said license, which said penalty must be added to the amount of said license, and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from prosecution for such misdemeanor.

History: En. Sec. 6, p. 200, L. 1897; re-en. Sec. 2780, Rev. C. 1907; amd. Sec. 1, Ch. 25, L. 1921; re-en. Sec. 2443, R. C. M. 1921.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

Action To Collect Tax Unauthorized

This section does not authorize an action to collect a license tax, but merely imposes a penalty for doing business without the license required. State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

References

Foorman v. Boland, 59 M 185, 196 P 147.

Collateral References
Licenses⇨40, 41.
53 C.J.S. Licenses §§ 62, 66, 77.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity. 147 ALR 142.

CHAPTER 33

LICENSES—MOVING PICTURE THEATERS

(Repealed—Section 1, Chapter 33, Laws of 1957)

84-3301 to 84-3307. Repealed.

Repeal

These sections (Secs. 1 to 6, 8, Ch. 91, L. 1937; Sec. 1, Ch. 74, L. 1953), relating to licenses for moving picture theaters, were repealed by Sec. 1, Ch. 33, Laws 1957.

CHAPTER 34

LICENSES—PRODUCE WHOLESALERS

Section
84-3401. Produce wholesaler, meaning of term.
84-3402. Produce wholesalers' license—who shall pay.
84-3403. Definitions.
84-3404. Application for license—contents—bond—expiration date—schedule of commissions and charges to be filed.
84-3405. Investigation of applicant—hearings—findings of commissioner.
84-3406. Records to be kept—contents.
84-3407. Inspection and report concerning produce.
84-3408. Enforcement of provisions of act—hearings.
84-3409. Record of proceedings and hearings to be kept by commissioner—record on review.
84-3410. Appeal to district court.
84-3411. Time for appeal.
84-3412. Notice on appeal—certification of record to district court.
84-3413. Regulations for enforcement of act may be made by commissioner.
84-3414. Co-operation with similar agencies.
84-3415. Disposition of license fees.
84-3416. Violation of provisions or regulations deemed misdemeanor—penalty.

84-3401. (2443.1) **Produce wholesaler, meaning of term.** For the purpose of this act any person who shall buy to sell at wholesale, or contract to buy to sell at wholesale, or who shall handle at wholesale for the purpose of resale, or who shall handle at wholesale on account of, or as agent for another, any produce as herein defined; shall be deemed a dealer at wholesale. Provided, that a trucker operating for hire under an M. R. C. license and not buying or selling any produce as herein defined, shall not come under the provisions of this act. Provided further, that the provisions of this act shall not apply to dealers at retail.

History: En. Sec. 1, Ch. 164, L. 1933.

Collateral References
Licenses⇨16 (2).
53 C.J.S. Licenses § 30.

84-3402. (2443.2) **Produce wholesalers' license—who shall pay.** No person shall engage in, or purport to be engaged in, or hold himself out as being engaged in the business of a dealer at wholesale, or as being a dealer at wholesale, as defined in this act, unless he shall be licensed to carry on such business by the commissioner. Provided, that the provisions of this act shall not apply to a farmer or gardener selling his own products, but

who shall whenever called upon to do so by an inspector furnish a sworn statement that the goods handled by him were actually grown by him and the inspector is hereby authorized for the purpose of this act to administer the oath.

History: En. Sec. 2, Ch. 164, L. 1933; amd. Sec. 1, Ch. 173, L. 1935.

33 Am. Jur. Licenses, p. 332, § 9; p. 341, § 20; p. 358, § 34; p. 362, § 36.

Collateral References

Licenses⇐16 (2).
53 C.J.S. Licenses § 30.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract. 30 ALR 834; 42 ALR 1226 and 118 ALR 646.

84-3403. (2443.3) **Definitions.** a. The term "produce" as used in this act shall mean and include the natural products of the farm, and natural products of the orchard, vineyard, garden and apiary, raw and manufactured; (except grains, dairy products, livestock, poultry and poultry products), when handled for the purpose of resale.

b. The term "person" shall mean an individual, or group of persons, exchange, firm, copartnership, corporation or association.

c. The term "commissioner" shall mean the commissioner of agriculture of the state of Montana.

History: En. Sec. 3, Ch. 164, L. 1933.

Collateral References

Licenses⇐16 (2).
53 C.J.S. Licenses § 30.

84-3404. (2443.4) **Application for license—contents—bond—expiration date—schedule of commissions and charges to be filed.** Licenses to engage in the business of a dealer at wholesale within the state of Montana shall be issued by the commissioner to such reputable persons as shall apply therefor, pay the prescribed fee and comply with the conditions herein specified, to wit:

a. The application shall be in writing, accompanied by the prescribed fee, and under oath shall set forth the place where the applicant intends to carry on the business for which the license is desired, and a separate license shall be required for each place of business, and for the purpose of this act each truck used for assembling and distributing produce other than from a permanently established place of business through which all business of sales and accounts are handled shall be considered a separate place of business; the estimated amount of business to be done monthly; the full names of the persons constituting the firm, in case the applicant is a copartnership; the names of the officers of the corporation and where incorporated, if a corporation; and a financial statement showing the value and character in a general way of the assets and the amount of liabilities of the applicant.

b. Before issuing any license as provided by this act, the commissioner shall require the applicant to execute and file with him a good and sufficient bond to the state of Montana in an amount to be fixed by the commissioner based on the monthly business to be transacted by the applicant, said bond to be not less than one thousand dollars ($1,000.00). The commissioner may from time to time require additional bond should the business transacted warrant such increase under penalty of revoking the license. Said bond to be executed by the applicant as principal and a

surety company authorized to do business in this state as surety; the form thereof to be fixed by the commissioner, conditioned for the faithful performance of his duties as a dealer at wholesale; for the observance of all laws relating to the carrying on of the business of a dealer at wholesale; for the payment, when due, of the purchase price of produce purchased by him; for the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission and the prompt payment to persons entitled thereto of the proceeds of such sales less lawful charges, disbursements and commission. Such bond shall cover all wholesale produce business transacted in whole or in part within the state of Montana.

c. All licenses shall expire December 31st of each year; the license, or a certified copy thereof, shall be kept posted in the office of the licensee at each place within the state where he transacts business; the fee for each license shall be one hundred dollars ($100.00) and for each certified copy thereof one dollar ($1.00). Except that where a truck is the place of business the license fee for the first truck shall be one hundred dollars ($100.00) and for each additional truck fifty dollars ($50.00).

d. The applicant shall file with the commissioner a schedule of his commissions and charges for services in connection with produce handling on account of or as agent for another.

History: En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935.

Collateral References
Licenses⇐22, 26, 29.
53 C.J.S. Licenses §§ 36, 39, 48.

84-3405. (2443.5) **Investigation of applicant — hearings — findings of commissioner.** The commissioner shall examine such application and cause an investigation to be made of said applicant and his business, business rating, character and reputation. If, from such examination and investigation the commissioner shall determine that the said applicant is in the matter of his business, business rating, character and reputation not properly qualified to engage in business as a dealer, he shall refuse to grant a license and shall deny the application, and notify the applicant in writing of his decision. Any applicant whose application is denied by the commissioner may within ten (10) days after the mailing of said notice of rejection, petition said commissioner for a hearing and thereupon said commissioner shall afford applicant an opportunity for a hearing on a date not less than ten (10) nor more than twenty (20) days after the receipt of said petition. Any and all persons who may have objected to the licensing of applicant shall be given at least ten (10) days' notice of said hearing by mail. Said hearing shall be informal and the commissioner shall hear any and all evidence which may be offered or adduced either for or against said applicant, in the matter of his business, business rating, character and reputation. After hearing all such evidence, the commissioner shall make his findings of fact on which he may again deny the said application or grant the same as he finds the facts to be, and the said findings of fact made by the commissioner shall be conclusive, subject however, to the right of appeal as hereinafter provided.

History: En. Sec. 5, Ch. 164, L. 1933.

84-3406. (2443.6) **Records to be kept—contents.** Every dealer in produce shall make and keep a full and complete record of all produce handled by him covering the following facts:

a. The name and address of the producer or shipper.

b. The date of receipt of each consignment.

c. The kind and quantity of produce received.

d. The agreed purchase price or commission charged.

e. Date of sale.

f. Price at which sold.

g. The name of the person, firm or corporation to whom sold.

h. An itemized statement of charges to be paid by the producer in connection with the sale.

i. The above information and record shall be open for confidential inspection of the commissioner or his deputies.

History: **En. Sec. 6, Ch. 164, L. 1933.**

Collateral References

Licenses⇨30.

53 C.J.S. Licenses § 49.

84-3407. (2443.7) **Inspection and report concerning produce.** Whenever any dealer at wholesale, to whom produce has been shipped, or consigned for sale on a commission basis, or on consignment or under any circumstances wherein the title to said produce remains with the shipper, has received the same, he shall within a reasonable time thereafter, make a written report to the shipper, which report shall include the exact time of arrival; the quantity and quality of the produce; and in the event such produce is received in a decayed or damaged condition noticeable upon arrival, the dealer shall have the common carrier or horticultural inspector of the state of Montana make proper record certifying such condition; and the dealer shall notify the consignor promptly so that the consignor can take further action to verify the report.

History: **En. Sec. 7, Ch. 164, L. 1933.**

84-3408. (2443.8) **Enforcement of provisions of act—hearings.** For the purpose of enforcing the provisions of this act, the commissioner upon his own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association, or corporation assuming or attempting to act as such, shall have full authority to, and must make any and all investigations he deems necessary, and he shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation or any other facilities or places in which any produce is kept, stored, handled or transported. If the commissioner, upon investigation, shall have reason to believe that any dealer is not acting in accordance with the provisions of this act, or upon the filing of a verified complaint against any dealer, it shall be the duty of the commissioner to have personal service made on said dealer or to mail by registered mail a complaint, or a copy of the verified complaint against said dealer, and in the event dealer fails to make informal adjustment or settlement of the charges set forth therein, to the satisfaction of the commissioner, the commissioner shall give notice of the time and place of a formal hearing thereon. Notice of any hearing shall be given at least twenty (20) days prior thereto

and said hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

He shall have full authority to administer oaths and take testimony hereunder, to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders of subpoenas of said commissioner shall be guilty of contempt and shall be certified to any district court of the state, which court shall punish any such contempt. Copies of records, inspection certificates, certified reports and all papers on file in the office of the commissioner shall be prima facie evidence of the matters therein contained.

At the time and place appointed for such hearing, the commissioner shall hear all parties and their evidence and thereupon the commissioner shall dismiss the charges, or suspend the license of said dealer for a specified period, or revoke the same, or make such other appropriate order as may be deemed just and proper; any order shall specify the effective date thereof and any order other than the one suspending or revoking a license shall automatically suspend such license until such order is complied with.

History: En. Sec. 8, Ch. 164, L. 1933.

Attack on Order of Commissioner

Where charge was brought by seller of produce that dealer did not pay him and after hearing the commissioner ordered the dealer and his surety to pay the stated amount owed, the court, in proceeding for declaratory judgment, could not declare that the commissioner had no authority to make such order where the court did not have the evidence before it which was presented to the commissioner. National Surety Corp. v. Kruse, 121 M 202, 192 P 2d 317, 319.

Order To Pay for Produce

If a dealer admits that he owes a seller a certain amount of money as the purchase price of produce, the commissioner may order it paid to the end that the license shall be suspended until the order is complied with. National Surety Corp. v. Kruse, 121 M 202, 192 P 2d 317, 320.

84-3409. (2443.9) **Record of proceedings and hearings to be kept by commissioner—record on review.** The commissioner shall keep a full and complete record of all proceedings and hearings had before the commissioner of any formal hearing, and all testimony produced before the commissioner shall be taken down by a stenographic reporter appointed by the commissioner, and the party shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commissioner a transcript of such testimony together with all exhibits and of the pleadings, records, and proceedings in the cause shall constitute the record.

History: En. Sec. 9, Ch. 164, L. 1933.

84-3410. (2443.10) **Appeal to district court.** Any action of the state commissioner of agriculture with reference to the granting of, or the refusal to grant, or to renew any license, or with reference to the revocation or suspension of any license granted under the provisions of this act, be reviewed upon appeal to any district court of the state of Montana, but pending final determination of any such review, in the case of the revocation of or refusal to renew the license of any produce dealer, such license shall be deemed in full force and effect until the final determination of such proceedings; pro-

vided, that no license shall be refused during the time or on account of the pendency of any review proceedings.

History: En. Sec. 10, Ch. 164, L. 1933.

Cross-Reference

Application of Montana Rules of Civil Procedure to appeals from commissioner, see M. R. Civ. P., Rule 81(a), Table A.

Collateral References

Licenses⊂⊃22, 36.
53 C.J.S. Licenses §§ 39, 42.

84-3411. (2443.11) **Time for appeal.** Within thirty (30) days after the rendition of the decision by the commissioner and within twenty (20) days after notice thereof any party affected thereby may appeal to the district court of the judicial district of the state of Montana, in and for the county in said state wherein said transaction occurred or the dealer may have his place of residence, or if such dealer be a corporation may have its principal office or place of business, and said appeal shall be for the purpose of having the lawfulness of the original order or decision of the commissioner inquired into and determined.

History: En. Sec. 11, Ch. 164, L. 1933.

84-3412. (2443.12) **Notice on appeal—certification of record to district court.** Said appeal shall be taken by serving a written notice of said appeal on the commissioner, which said service shall be made by the delivery of a copy of such notice to said commissioner and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of said party. The order of filing and serving of said notice is immaterial.

Immediately upon service upon said commissioner of said notice the said commissioner shall certify to said district court the entire record of proceedings including all testimony and evidence taken by said commissioner, with the clerk of said district court. Upon said appeal said district court shall act as a court of review.

History: En. Sec. 12, Ch. 164, L. 1933.

84-3413. (2443.13) **Regulations for enforcement of act may be made by commissioner.** The commissioner shall have power and it shall be his duty from time to time to make and publish uniform rules and regulations not inconsistent with the law for carrying out and enforcing the provisions of this act.

History: En. Sec. 13, Ch. 164, L. 1933.

84-3414. (2443.14) **Co-operation with similar agencies.** The commissioner shall co-operate with the United States department of agriculture and with other federal authorities, and with the state and municipal authorities of this and other states, and do and perform such other acts and things as may be necessary and proper in carrying out the purposes of this act.

History: En. Sec. 14, Ch. 164, L. 1933.

84-3415. (2443.15) **Disposition of license fees.** All sums received by the commissioner for license fees under the provisions of this act shall be

paid into the state treasury and deposited in the special fund known as the "revolving fund of the division of horticulture" to be expended by the chief of said division upon approval of the treasurer of the state of Montana, and all moneys so deposited shall be held subject to the uses of the chief of the division of horticulture for the purpose of carrying out the provisions of this act.

History: En. Sec. 15, Ch. 164, L. 1933.

Collateral References
Licenses⊂⇒33.
53 C.J.S. Licenses § 56.

84-3416. (2443.16) **Violation of provisions or regulations deemed misdemeanor—penalty.** Any person who shall violate any of the provisions of this act, or who shall fail to comply with the regulations prescribed by this act, or who shall fail or neglect to obey any lawful order of the state department of agriculture, or the commissioner, or any other officer thereof made pursuant to the authority of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, and such fine shall be paid into the state treasury and deposited as provided in section 84-3415; provided, however, that nothing in this act will apply to a consumer or group of consumers acting co-operatively in obtaining produce for their own use only and not for resale.

History: En. Sec. 18, Ch. 164, L. 1933; amd. Sec. 3, Ch. 173, L. 1935.

Collateral References
Licenses⊂⇒40.
53 C.J.S. Licenses § 66.

CHAPTER 35

LICENSES—PUBLIC CONTRACTORS

Section 84-3501. Definitions.
84-3502. Unlawful to engage in public contracting business without license.
84-3503. State board of equalization as registrar.
84-3504. Application for license—contents.
84-3505. Classes of licenses—rights granted under licenses—fees.
84-3506. Investigation of applicant and granting of license—renewals—fees.
84-3507. Bids to show bidder is licensed and class of bid.
84-3508. Expense of act, how paid—disposal of funds.
84-3509. Records—public may inspect—certified copies—fees.
84-3510. Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.
84-3511. Relicensing not to be within year of cancellation.
84-3512. Penalty for acting without license.

84-3501. (2433.1) **Definitions.** The following words, terms and phrases in this act are, for the purposes hereof, defined as follows:

(a) The word "person" includes any individual, firm, copartnership, association, corporation or other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is clearly disclosed by the context hereof.

(b) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract with the

state of Montana, or with any board, commission or department thereof, or with any board of county commissioners, or with any city or town council, or with any agency of any thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for the construction or reconstruction of any public work when the contract cost, value or price thereof exceeds the sum of one thousand dollars ($1,000.00).

(c) The term "public contractor" includes subcontractors undertaking to perform the work covered by the original contract, or any part thereof, the contract cost, value or price of which exceeds the sum of one thousand dollars ($1,000.00).

History: En. Sec. 1, Ch. 178, L. 1935.

Compiler's Note

Chapter 277, Laws 1965, enacted new provisions for a license tax payable only by nonresident public contractors. However, on April 26, 1965, the supreme court of Montana declared this act unconstitutional and void. State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, — M —, 403 P 2d 635.

Collateral References

Licenses⇨11 (5).
53 C.J.S. Licenses § 30.

84-3502. (2433.2) **Unlawful to engage in public contracting business without license.** From and after the passage and approval of this act, it shall be unlawful for any person, firm, copartnership, corporation, association or any combination of any thereof, to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided.

History: En. Sec. 2, Ch. 178, L. 1935.

84-3503. (2433.3) **State board of equalization as registrar.** The state board of equalization of the state of Montana is hereby constituted the registrar for the purpose of this act, and is empowered to employ such assistance and to procure such records, supplies and equipment as may be necessary to carry out its provisions.

History: En. Sec. 3, Ch. 178, L. 1935.

Collateral References

Licenses⇨22.
53 C.J.S. Licenses § 39

84-3504. (2433.4) **Application for license—contents.** To obtain a license under this act, the applicant shall submit, on such forms as the registrar shall prescribe, an application, under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of contract work completed, and for whom performed during five (5) years prior to the filing of such application; and a complete financial statement on such forms and disclosing such information as shall be required by the registrar. Such application shall also contain such other information as may be requested by the registrar under such rules and regulations as may be adopted by said registrar and which will assist said registrar in determining the applicant's fitness to act in the capacity of a public contractor as defined in this act; and such application shall also contain a statement that the applicant desires the issuance of a license under the terms of this act, and shall specify the class of license applied for as hereinafter provided.

History: En. Sec. 4, Ch. 178, L. 1935.

Collateral References
Licenses⊂⊃22.
53 C.J.S. Licenses § 39.
33 Am. Jur. 358, Licenses, § 34.

84-3505. (2433.5) **Classes of licenses—rights granted under licenses—fees.** There shall be three classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501(b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars ($200.00).

The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars ($50,000.00); and shall pay unto the registrar as a license fee the sum of one hundred dollars ($100.00) for such Class B license at the time of making application therefor.

The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars ($25,000.00); and shall pay unto the registrar as a license fee the sum of ten dollars ($10.00) at the time of making application therefor.

Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars ($1,000.00), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; amd. Sec. 1, Ch. 113, L. 1939.

Collateral References
Licenses⊂⊃23, 29.
53 C.J.S. Licenses §§ 40, 48.

84-3506. (2433.6) **Investigation of applicant and granting of license—renewals—fees.** It shall be the duty of the registrar to investigate and determine the applicant's fitness to act in the capacity of public contractor, as defined in this act, and no license shall be issued unto such applicant until the expiration of ten (10) days from and after the filing of such application. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject

to the limitations of such license, until the expiration of the then current calendar year.

Any license issued under the provisions of this act may be renewed for each successive calendar year by obtaining from the registrar a certificate of renewal thereof. For the purpose of obtaining such certificate of renewals, the licensee shall file with the registrar an application therefor, stating the class of license applied for and containing the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the registrar on or before the first day of March of each successive calendar year; and such renewal certificate shall be good for the then current calendar year.

At the time of filing the application for a certificate of renewal, the applicant shall pay unto the registrar a license fee equal to fifty (50) per cent of the license fee for the original license; provided that if any applicant for a certificate of renewal shall apply for a renewal under a different class from the license theretofore issued to him, such new license shall only be issued upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

All certificates of renewal, wherein the applicant does not apply for a change in the class of license shall be issued by the registrar to the applicant forthwith when the application is filed and the license renewal fee paid.

History: En. Sec. 6, Ch. 178, L. 1935; amd. Sec. 1, Ch. 113, L. 1937.

Collateral References
Licenses⇐22, 36.
53 C.J.S. Licenses §§ 39, 42.

84-3507. (2433.7) **Bids to show bidder is licensed and class of bid.** All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided.

History: En. Sec. 7, Ch. 178, L. 1935.

Collateral References
Licenses⇐36.
53 C.J.S. Licenses § 42.

84-3508. (2433.8) **Expense of act, how paid—disposal of funds.** Any and all expenses incurred by the registrar in the administration of this act shall be paid out of the fund accruing from the fees imposed by and collected under the provisions hereof. All moneys collected hereunder, less the expense incurred in the administration of this act, shall be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935.

Collateral References
Licenses⇐33.
53 C.J.S. Licenses § 56.

84-3509. (2433.9) **Records—public may inspect—certified copies—fees.** The registrar shall maintain in said registrar's office at Helena,

Montana, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof; and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of one dollar ($1.00); and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

History: En. Sec. 9, Ch. 178, L. 1935.

Collateral References

Licenses⊂⇒21.

53 C.J.S. Licenses § 37.

84-3510. (2433.10) **Complaints against licensee — grounds — investigation—hearing—suspension of license—appeals.** Any person, firm, copartnership, corporation, association or other organization may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

(1) Abandonment of any contract without legal excuse;

(2) Diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this act, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract, obligation or purpose with intent to defraud or deceive creditors or the owner;

(3) The doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(4) The making of any false statement in any application for a license or renewal thereof.

Upon the filing of such complaint the registrar shall investigate the charge and within sixty days after the filing of such complaint shall render and file said registrar's decision with said registrar's reasons therefor. If the registrar's decision be that the licensee has been guilty of any of such acts or omissions, said registrar shall suspend the contractor's license. At any time within twenty days thereafter the complainant or the contractor may petition the registrar for a rehearing. In the order granting or denying such rehearing the registrar shall set forth a statement of the particular grounds and reasons for said registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the registrar shall set the matter for further hearing on due notice to the parties, and within thirty days after submission of the matter, serve said registrar's decision after rehearing in like manner as an original decision.

The filing of such petition for rehearing as to the registrar's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

Within thirty days after the decision on rehearing, any party aggrieved by such decision of the registrar may appeal therefrom to the district court in and for the county in which the licensee under this act resides or does business as a public contractor, by serving upon the registrar a notice

of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

In all cases where the licensee has filed his notice of appeal from the decision of the registrar or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935.

Collateral References

Licenses⊂⊃38.
53 C.J.S. Licenses § 44.

84-3511. (2433.11) **Relicensing not to be within year of cancellation.** After cancellation of a license such licensee shall not be relicensed during the current calendar year in which the offense was committed.

History: En. Sec. 11, Ch. 178, L. 1935.

84-3512. (2433.12) **Penalty for acting without license.** Any person, firm, copartnership, corporation, association or other organization acting in the capacity of public contractor within the meaning of this act, without a license as herein provided, shall be guilty of a misdemeanor and shall, upon conviction thereof, if a person, be punished by a fine of not to exceed five hundred dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply, upon conviction, to any member of a copartnership, or to any construction, managing or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this act.

History: En. Sec. 12, Ch. 178, L. 1935.

Collateral References

Licenses⊂⊃40.
53 C.J.S. Licenses § 66.

CHAPTER 36

LICENSES—SLOT MACHINES

(Repealed—Section 5, Chapter 197, Laws of 1949)

84-3601 to 84-3610. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 142, L. 1945; Sec. 1, Ch. 285, L. 1947), providing for the licensing of slot machines, are deemed repealed by Sec. 5, Ch. 197, Laws 1949 which repealed "all laws of this state and all ordinances of cities and towns relating to the issuance of licenses for the operation of slot machines."

CHAPTER 37

LICENSES—TRANSIENT RETAIL MERCHANTS

Section 84-3701. Transient retail merchants' license—persons liable—definition of "temporary premises."
84-3702. Amount of license.
84-3703. Application for license.
84-3704. Provision for bond instead of license.
84-3705. Issuance of license—filing of application—endorsement.

84-3706. Requirement of posting license in place of business—penalty for failure.
84-3707. Punishment for doing business without license.
84-3708. Interpretation of provisions of law.

84-3701. (2429.1) **Transient retail merchants' license—persons liable—definition of "temporary premises."** Every person, firm or corporation, acting for himself or itself, or representing any other person, firm or corporation who or which brings into temporary premises, into any county of this state, a stock of goods, wares or articles of merchandise, or notions, or other articles of trade, and who or which solicits, sells or offers to sell, or exhibit for sale, such stock of goods, wares or articles of merchandise or notions or other articles of trade at retail, is within the meaning of this act, a transient retail merchant, and such definition shall continue to apply until such person, firm or corporation shall be continuously engaged at such particular place in the county for a period of one year.

"Temporary premises" within the meaning of this act shall be continued to include any hotel, rooming house, store room, building or any part of any building whatsoever, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or any public or quasi-public place, temporarily occupied for such business.

History: En. Sec. 1, Ch. 182, L. 1925; amd. Sec. 1, Ch. 113, L. 1951.

40 Am. Jur. 938, Peddlers, Transient Dealers, and Solicitors, § 30 et seq.

Collateral References

Licenses⊂⊃15 (2).
53 C.J.S. Licenses § 30.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

84-3702. (2429.2) **Amount of license.** The amount to be paid for the license to conduct the business of a "transient retail merchant" shall be the sum of five dollars ($5.00) for each week or fraction thereof, to be paid in advance to the county treasurer of the county in which such business is conducted.

History: En. Sec. 2, Ch. 182, L. 1925.

Collateral References

Licenses⊂⊃29.
53 C.J.S. Licenses § 48.

84-3703. (2429.3) **Application for license.** Every transient retail merchant desiring to do business in any county of this state, must before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing subscribed and sworn to by such applicant before an officer in this state authorized to take oaths which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. His local headquarters, if any.
4. Time of his arrival in the county.
5. County from which last license, if any, received.
6. Whether acting as principal, agent, or employee.
7. If acting as agent or employee, the name and place of business of his principal or employer.

8. If an agent, as part of application, principal's acknowledgment of such agency must accompany application.

9. Brief descriptive list of articles to be offered for sale, or services to be performed.

10. Whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.

11. The number of weeks for which license is requested.

At the time of filing the application, such transient retail merchant must accompany the application above provided with the sum specified in the preceding section as a license fee except as provided in the following section.

History: En. Sec. 3, Ch. 182, L. 1925.

Collateral References

Licenses⇐22.
53 C.J.S. Licenses § 39.

84-3704. (2429.4) **Provision for bond instead of license.** In lieu of the license fee prescribed in section 84-3702, every transient retail merchant who filed with the application required in section 84-3703 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than one year, shall upon filing and approval of the bond herein provided for, receive from the county treasurer a license permitting the conduct of such business for a period of one year. Such bond shall be a surety bond in the penal sum of one thousand dollars ($1,000.00) to said county treasurer executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county (or in lieu thereof a cash bond of equal amount) and to be approved by said county treasurer conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than one year and to insure the payment of license fees for the period such business is actually conducted, if not in fact a bona fide permanent business, and further conditioned, upon the delivery of goods ordered or sold in accordance with the terms of such order or sale. Any person aggrieved by any action or misrepresentation of any such transient retail merchant shall have a right of action on said bond for the recovery of his money advanced or damage, and costs. Such bond shall remain in full force and effect for a period of six months after the expiration of the one-year period.

History: En. Sec. 4, Ch. 182, L. 1925.

Collateral References

Licenses⇐26.
53 C.J.S. Licenses § 36.

84-3705. (2429.5) **Issuance of license—filing of application—endorsement.** Upon filing of the application prescribed in section 84-3703, and the payment of the fee prescribed in section 84-3702, the county treasurer shall issue and deliver to the applicant, in the county a license to carry on the business described in such application in the county in which such license is so issued, for the period for which such license is requested.

Upon filing of the application prescribed in section 84-3703, and the bond prescribed in section 84-3704, the county treasurer shall issue and

deliver to the applicant a license to carry on the business described in such application in the county which such license is so issued, for a period of one year from the date of such license.

Such licenses shall be nontransferable and shall have printed across the face thereof in bold type the words "Not Transferable."

The county treasurer shall endorse upon each application the date of issuance of the license and the duration thereof and shall immediately file such application with the county clerk and recorder of his county, who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 182, L. 1925.

Collateral References

Licenses⇦22, 37.
53 C.J.S. Licenses §§ 39, 45.

84-3706. (2429.6) **Requirement of posting license in place of business —penalty for failure.** Every transient retail merchant doing business under the provisions of this act shall at all times keep said license conspicuously posted in said place of business, and any such transient retail merchant who shall fail to post and keep posted his license as above provided is guilty of a misdemeanor and shall be fined not less than ten dollars ($10.00) nor more than twenty-five dollars ($25.00) for each offense.

History: En. Sec. 6, Ch. 182, L. 1925.

Collateral References

Licenses⇦40.
53 C.J.S. Licenses § 66.

84-3707. (2429.7) **Punishment for doing business without license.** Every transient retail merchant as herein defined, doing business without first obtaining a license so required by this act is guilty of a misdemeanor, and shall be punished accordingly.

History: En. Sec. 7, Ch. 182, L. 1925.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

84-3708. (2429.8) **Interpretation of provisions of law.** Nothing in this act contained, is intended to operate so as to interfere with the power of the United States to regulate commerce between the states as such power is defined by the supreme court of the United States. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act, nor shall the provisions of this act apply to duly constituted "city markets" operated by authority of any city or town.

History: En. Sec. 8, Ch. 182, L. 1925.

CHAPTER 38

LEVY OF TAXES

Section 84-3801. The levy.
84-3802. Tax levies to be made in mills and tenths and hundredths of mills.
84-3803. Rate of taxation fixed by state board.

84-3804. Increase of state tax levy—support units of university.
84-3805. Rate of county fixed by board of county commissioners.
84-3806. Failure of county commissioners to levy.
84-3807. Tax operates as a judgment or lien.
84-3808. Tax on personal property lien on realty—separate assessment.
84-3809. Tax upon real property and tax on improvements a lien upon both.
84-3810. Tax for school purposes.

84-3801. (2147) **The levy.** There must be levied at each session of the legislative assembly, upon all property in the state liable to taxation, a sufficient sum to realize the amount necessary to meet the appropriations made for the two succeeding fiscal years, and for the payment of deficiencies, if any have occurred in the previous fiscal year or years. Such levy must be made for each fiscal year separately, and must not exceed two and one-half mills on each dollar of valuation. The fiscal year commences on the first day of July.

History: En. Sec. 80, p. 104, L. 1891; amd. Sec. 3820, Pol. C. 1895; re-en. Sec. 2593, Rev. C. 1907; re-en. Sec. 2147, R. C. M. 1921.

Cross-Reference

Hail insurance, levy for, sec. 82-1506.

State Taxes

The sum of the corrected assessments of the several counties, with the additions made by the state board of equalization, is the basis for taxation for state purposes at the rate fixed biennially by the legislature. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Northern Pacific Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Collateral References

Taxation⇨298.
84 C.J.S. Taxation § 351.
51 Am. Jur. 614, Taxation, § 647 et seq.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.

84-3802. (2148.1) **Tax levies to be made in mills and tenths and hundredths of mills.** Every board of county commissioners, city or town council or commission, and every other board or commission, authorized by law to make or fix tax levies for any purpose, shall make and fix every such levy in mills, and tenths and hundredths of mills.

History: En. Sec. 1, Ch. 123, L. 1935.

Collateral References

Taxation⇨301 (1).
84 C.J.S. Taxation § 355.

84-3803. (2149) **Rate of taxation fixed by state board.** The state board of equalization must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each one hundred dollars of taxable property of the state, after allowing twelve per cent for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislative assembly for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R. C. M. 1921. Cal. Pol. C. Sec. 3713.

Constitutionality

The validity of the provisions of this section, conferring authority upon the state board of equalization to fix for state purposes each year, an ad valorem rate of taxation sufficient to meet the levy made by the legislative assembly for each fiscal year, questioned but not considered. Herrin v. Erickson, 90 M 259, 273, 281, 2 P 2d 296, distinguished in 93 M 466, 470, 479, 19 P 2d 227.

References

Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Northern Pacific Ry.

Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Collateral References

Taxation⇨305.
84 C.J.S. Taxation § 361.

84-3804. Increase of state tax levy—support units of university. The rate of taxation on real and personal property for state purposes, as is hereafter defined, for each year for a period of ten (10) years beginning with the year 1959; shall be increased six (6) mills on each dollar of taxable valuation in addition to the levy which is now or may hereafter be authorized by section 9 of article XII of the constitution of the state of Montana, and the legislative assembly is authorized and empowered to levy an additional tax for state purposes for each of said years of not exceeding six (6) mills on each dollar of taxable valuation for state purposes, and all money derived from said additional levy of six (6) mills for each of said years or so much thereof as may be necessary shall be appropriated by the legislative assembly for the support, maintenance and improvement of the state university of Missoula, the state college of agriculture and mechanic arts at Bozeman, the Montana state school of mines at Butte, the western Montana college of education at Dillon, the eastern Montana college of education at Billings, and the northern Montana college at Havre, now comprising the units of the university of Montana, together with the agricultural experiment station and its branches and substations, and the agricultural extension service, including the soil survey and grain laboratory.

History: En. Sec. 1, Ch. 218, L. 1957. Referendum No. 61, approved at election Nov. 4, 1958, effective under Governor's proclamation on Dec. 8, 1958.

Compiler's Notes

This section is substituted for Sec. 1, Ch. 217, Laws 1947 and given the same section number as it covers the same subject matter. Section 1, Ch. 217, Laws 1947 was repealed by Sec. 4, Ch. 218, Laws 1957.

Chapter 249, Laws 1947, approved at referendum in 1948, authorized the levy of not to exceed 2½ mills per annum for the payment of principal and interest on a bond issue of $5,000,000 for the university of Montana.

Collateral References

Taxation⇨305.
84 C.J.S. Taxation § 361.

84-3805. (2150) **Rate of county fixed by board of county commissioners.** The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and must levy taxes upon the taxable property of the county.

History: En. Sec. 81, p. 104, L. 1891; re-en. Sec. 3825, Pol. C. 1895; re-en. Sec. 2598, Rev. C. 1907; re-en. Sec. 2150, R. C. M. 1921. Cal. Pol. C. Sec. 3714.

NOTE.—This section held impliedly repealed by chapter 165, Laws 1941 and chapter 23, Laws 1943, amending section 71-106 (4465.4) in so far as section 84-3805 applied to the time of levying of poll tax. Opinion of Attorney General, No. 112, Vol. 19.

Temporary Provision for Emergency Levies by Counties and Municipalities

Chapter 31, Laws 1965, provides authority until December 31, 1967 for counties and municipalities to make special levies to cover certain emergency expenses. The act read: "An act concerning tax levies for city and county emergencies and containing an effective date and containing an expiration date.

"Section 1. As used in this act: (1) An 'emergency' may be:

"(a) A fire, flood, explosion, storm, blizzard, earthquake or epidemic; or

"(b) An occurrence requiring the immediate preservation of order or public health; and

"(c) An occurrence requiring the restoration of a condition of usefulness which has been destroyed; or

"(d) An occurrence which requires relief of a stricken community.

"(2) 'County disaster committee' includes:

"(a) The members of the agricultural stabilization and conservation county committee of the county involved;

"(b) The county commissioners and mayor or mayors of the county involved;

"(c) The office manager of the soil conservation service office in the county involved;

"(d) The county civil defense director;

"(e) The county agriculture extension agent;

"(f) Such other persons not to exceed two (2) in number as the county commissioners may appoint.

"(3) 'Council' means the city council of an incorporated municipality.

"(4) 'Board' means the board of county commissioners.

"(5) 'Mayor' means the mayor of an incorporated municipality.

"(6) 'Municipality' means an incorporated municipality.

"Section 2. The county disaster committee shall determine by a majority vote when an emergency exists. Upon the determination that an emergency does exist, they shall submit a resolution to the mayor or mayors of municipalities of the county and to the chairman of the board.

"Section 3. (1) Upon receipt of the resolution the mayor or mayors and the chairman of the board shall call joint or separate meetings of the council or councils and the board, respectively.

"(2) A mayor or chairman of a board shall give reasonable notice of the time and place at which the meeting or meetings shall be held.

"Section 4. (1) If at the meeting or meetings the council and the board respectively find from the resolution of the county disaster committee that an emergency exists, they shall place in their respective minutes a resolution stating facts constituting the emergency.

"Section 5. (1) The council and the board shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the council shall not exceed two (2) mills on the municipalities taxable valuation. The millage levied by the board shall not exceed two (2) mills on the taxable valuation of the county outside the municipality or municipalities.

"(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

"(3) An additional levy or levies may be made by the appropriate levying body providing that the sum of the levies for emergencies as set forth in this act not exceed two (2) mills in any one year.

"(4) All levies under this act may only be passed by a unanimous vote of the appropriate body.

"(5) From and after July 1, 1965 no emergency shall be declared more than 'two' (2) weeks after the occurrence of such emergency event.

"Section 6. Funds remaining upon the restoration to normal after the emergency shall remain in a separate fund known as the emergency fund and shall be used for no other purpose.

"Section 7. This act is effective on its passage and approval.

"Section 8. This act shall be in force and effect until December 31, 1967."

Cross-References

Airports, sec. 1-804.

County bonds, levy to pay, sec. 16-2039.

County commissioners, tax levy by, secs. 16-1004, 16-1015.

County fairs, tax levy, secs. 16-1406, 16-1412.

County floating indebtedness, levy to pay, secs. 16-2017, 16-2019.

County free library, levy, sec. 44-206.

Gopher destruction, levy for, sec. 16-1152.

Health units, levy for, sec. 69-812.

Poor, tax levy, sec. 71-106.

Protection of sheep from predatory animals, levy for, sec. 46-2102.

Purebred livestock shows, levy for, sec. 46-2201.

Rodent control, sec. 16-1177.

Rural improvement districts, levy, sec. 16-1615 et seq.

School purposes, levy for, sec. 84-3810.

Increased Valuations

State board of equalization, which issued a directive to board of county commissioners and county assessor in November, 1963, requiring use of certain valuations on grade of farm land for 1964 and years thereafter, which the officials of the county refused to do, was entitled to mandamus to compel the county officials to comply with the directive. Alleged impossibility of compliance on July 22, 1964 was no defense. The officials had from November until the second Monday in August to accomplish the task but chose to do nothing except contest the matter. State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 769.

Time for Fixing Rate

Board of county commissioners, at the conclusion of its sitting, must fix the rate of taxation for the year. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

Time of Attachment of Lien

Even though section 84-3809 provides that the tax lien attaches in March, the lien cannot become choate for the purpose of determining its priority as against federal tax liens until the amount is determined pursuant to this section. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

References

Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Northern Pacific Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

84-3806. (2151) **Failure of county commissioners to levy.** The action of the state board of equalization in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed, and imposes upon the county commissioners, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R. C. M. 1921. Cal. Pol. C. Sec. 3715.

Collateral References

Taxation⇦300.

84 C.J.S. Taxation § 354.

51 Am. Jur., Taxation, p. 830, § 943 et seq.; p. 881, § 1010 et seq.

84-3807. (2152) **Tax operates as a judgment or lien.** Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes and deliver the same to the sheriff. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907; re-en. Sec. 2152, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1963. Cal. Pol. C. Sec. 3716.

NOTE.—The title referred to in the above section embraced the entire taxation laws contained in the Revised Codes of 1907.

Application to Special Taxes or Assessment

The provision of this section that every tax has the effect of a judgment applies only to general taxes, not special taxes. State ex rel. Spokane & Eastern Trust Co. v. Nicholson, 74 M 346, 350 et seq., 240 P 837. See also State ex rel. City of Great Falls v. Jeffries, 83 M 111, 118, 270 P 638 to the same effect.

Filing Fee

The fee for filing articles of incorporation, required of a foreign corporation by section 25-102, is not a property tax, creating a lien on the property until paid. State ex rel. General Electric Co. v. Alderson, 49 M 29, 33, 140 P 82, explained in 60 M 380, 383, 387, 199 P 909.

Migratory Cattle

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, county had a lien for the tax under this section, as amended in 1963, and section 84-3808 and properly seized and noticed up for sale on May 7, 1963, 200 head of cattle, as the lien was not limited to 1960 cattle by section 84-4202, as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1015.

Priority of Tax Claims

This section and section 84-3809 do not and cannot in themselves operate to confer priority on state tax claims over those

of the federal government. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. United States v. Christensen, 218 F Supp 722, 728, distinguished in 232 F Supp 330, 336.

Liens for taxes take precedence over mortgages of a federal agency. United States v. Christensen, 218 F Supp 722, 727.

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

Resort to Property

Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment where the owner makes default. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1016.

Subrogation

Where a mortgagor who had not paid any of the principal or interest and mortgagee allowed lien to outlaw but paid the taxes on the land to prevent delinquency, the mortgagee, who paid the taxes, became subrogee of the county and state as to the lien against the land, and acquired all the rights of the county and state except the rights to impose penalties for delinquency, and was entitled to reimbursement for the taxes before the court would quiet title to the land in mortgagor. Theory of equitable subrogation. Swingley v. Riechoff, 112 M 59, 68, 112 P 2d 1075.

Taxes on Realty Not Collectible by Court Action

Taxes on realty cannot be collected by an action for that purpose, nor can the tax lien be foreclosed, not only because the legislature has provided no such remedy, but also because this section provides that the tax has the effect of a personal judgment and levy of execution upon all personal property of the delinquent which is not satisfied until the tax is paid or the property is sold for payment of the tax. State ex rel. Tillman v. District Court, 101 M 176, 182, 53 P 2d 107.

Taxes on real estate cannot be collected by civil action, but only through voluntary payment or sale of the property at tax sale. United States v. Christensen, 218 F Supp 722, 724.

References

State ex rel. City of Butte v. Johnson, 16 M 570, 573, 41 P 706; Sanderson v. Bateman, 78 M 235, 252, 253 P 1100; State ex rel. Federal Land Bank of Spokane v. Hays, 86 M 58, 67, 282 P 32; State ex rel. Malott v. Board of Commrs. of Cascade County, 89 M 37, 94, 296 P 1; Calkins v. Smith, 106 M 453, 457, 78 P 2d 74.

Collateral References

Taxation⇐501.
84 C.J.S. Taxation § 585.
51 Am. Jur. 881, Taxation, § 1010 et seq.

Enforcement against tax-exempt property of tax on nonexempt property or on owner of tax-exempt property. 159 ALR 461.

Priority between tax or assessment lien and mortgage or other nontax lien held by state or municipality. 159 ALR 832.

84-3808. (2153) **Tax on personal property lien on realty—separate assessment.** (a). Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof, from and after 12 m. of the first Monday in March in each year.

(b). The taxes upon personal property based upon a taxable value up to and including one thousand dollars ($1000.00) shall be a first and prior lien upon the real property of the owner of such personal property; taxes upon personal property based upon the taxable value thereof in excess of one thousand dollars ($1000.00) shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and ex officio recorder of the county where such real property is situated at or before the time such personal property tax attached thereto shall have filed the notice hereinafter provided for, in which event the

taxes upon such excess of one thousand dollars ($1000.00), of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including one thousand dollars ($1000.00); and personal property taxes upon a taxable value up to one thousand dollars ($1000.00) may be paid, redeemed from a tax sale as by law provided, or discharged separate from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to one thousand dollars ($1000.00) as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(c). The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county assessor and in the office of the county treasurer of said county a notice giving;

(1) the name and address of the mortgagee and holder of the mortgage or lien;

(2) the name of the reputed owner of the land;

(3) the description of the land;

(4) the date of record and expiration of the mortgage or lien;

(5) the amount thereof; and

(6) a statement that he claims the benefit of the provisions of this section; and such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually, unless the mortgage be extended for a definite period to be stated in such notice.

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the county assessor of the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first Monday in March in the year for which property is assessed. Upon receipt by the assessor of such request, it is hereby made the duty of the county assessor to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; amd. Sec. 1, Ch. 97, L. 1937. Cal. Pol. C. Sec. 3717.

Migratory Cattle

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202 county had a lien for the tax under this section and section 84-3807, as amended in 1963, and properly seized and noticed up for sale on May 7, 1963, 200 head of cattle, as

the lien was not limited to 1960 cattle by section 84-4202 as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1015.

Resort to Property

Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment where the owner makes default. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1016.

References

Walsh v. Croft, 27 M 407, 408, 71 P 409; Hayes v. Smith, 58 M 306, 312, 192 P 615; County of Hill v. County of Liberty, 62 M 15, 20, 203 P 500; State ex rel. Sadler v. Evans, 106 M 286, 293, 77 P 2d 394; United States v. Christensen, 218 F Supp 722, 723.

Collateral References

Taxation⇨507, 509.
84 C.J.S. Taxation §§ 590, 599 et seq.
51 Am. Jur. 883, Taxation, § 1011.

84-3809. (2154) **Tax upon real property and tax on improvements a lien upon both.** Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

History: Ap. p. Sec. 1714, 5th Div. Comp. Stat. 1887; amd. Sec. 83, p. 105, L. 1891; amd. Sec. 3829, Pol. C. 1895; re-en. Sec. 2602, Rev. C. 1907; re-en. Sec. 2154, R. C. M. 1021. Cal. Pol. C. Sec. 3718.

Lien of Taxes—Action for Collection

Taxes on real property cannot be collected by an action, either at law or in equity, in the absence of statute so providing, such action being rendered unnecessary by the provisions of this section making taxes a lien akin to a judgment against the property. State ex rel. Tillman v. District Court, 101 M 176, 183, 53 P 2d 107.

Priority of Tax Claims

This section and section 84-3807 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. United States v. Christensen, 218 F Supp 722, 728, distinguished in 232 F Supp 330, 336.

Liens for taxes take precedence over mortgages of a federal agency. United States v. Christensen, 218 F Supp 722, 727.

The relative priority of taxes upon real property under Montana law cannot be determined solely upon the basis of this section. United States v. Christensen, 218 F Supp 722, 724.

While lien for taxes extends to penalties and interest, the interst and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

Time of Attachment of Lien

Even though this section provides that the tax lien attaches in March, the lien cannot become choate for the purpose of determining its priority as against federal tax liens until the amount is determined pursuant to section 84-3805. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

References

State ex rel. City of Butte v. Johnson, 16 M 570, 573, 41 P 706; Walsh v. Croft, 27 M 407, 408, 71 P 409; County of Hill v. County of Liberty, 62 M 15, 20, 203 P 500; State ex rel. City of Great Falls v. Jeffries, 83 M 111, 116, 270 P 638; Calkins v. Smith, 106 M 453, 457, 78 P 2d 74; Calvin v. Custer County, 111 M 162, 166, 107 P 2d 134; Swingley v. Riechoff, 112 M 59, 68, 112 P 2d 1075; Schuster v. Northern Co., 127 M 39, 257 P 2d 249, 251.

84-3810. (2155) **Tax for school purposes.** There must be levied by the legislative assembly, at the time other state taxes are levied, a tax of such number of cents of each one hundred dollars value of taxable property in the state as will produce a net sum equal to the amount reported to them by the state auditor, or as may be otherwise ascertained as being necessary to be raised, by an ad valorem tax for school purposes; and the assessment

and collection of said tax must be performed in the same manner and at the same time as the other state taxes are assessed and collected.

History: En. Sec. 84, p. 105, L. 1891; re-en. Sec. 3830, Pol. C. 1895; re-en. Sec. 2603, Rev. C. 1907; re-en. Sec. 2155, R. C. M. 1921. Cal. Pol. C. Sec. 3719.

Cross-References

Common school millage tax levy, secs. 75-3706, 75-3801.

Crippled children, levy for instruction, sec. 75-1406.

Emergency county high school warrants, levy to pay, sec. 75-4525.

Emergency school district warrants, levy for, sec. 75-1720.

Joint school districts, levy, sec. 75-1817.

New school district created, levy for payment of warrants, sec. 75-1812.

School bonds, levy for, secs. 75-3926, 75-3927.

School district budgets, levy for, sec. 75-1723.

School transportation, levy for, sec. 75-3414.

References

Northern Pacific Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Collateral References

Schools and School Districts⊂99.

79 C.J.S. Schools and School Districts § 377.

47 Am. Jur. 352, Schools, § 76 et seq.

Validity of legislative delegation of taxing power to school districts in absence of express constitutional provision authorizing such delegation. 113 ALR 1416.

CHAPTER 39

UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

Section 84-3901. Notice and discharge of federal liens—filing—fee not to be charged.
84-3902. Federal tax lien index.
84-3903. Entering discharge in index.
84-3904. Index and files—how furnished.
84-3905. Purpose of act.
84-3906. Interpretation of act.
84-3907. Citation of act.

84-3901. (2155.1) **Notice and discharge of federal liens—filing—fee not to be charged.** Notices of liens for taxes payable to the United States of America and certificates discharging such liens shall be filed in the office of the county clerk of the county or counties in this state, within which the property subject to such lien is situated. No fee shall be charged for such filing.

History: En. Sec. 1, Ch. 8, L. 1927.

NOTE.—Uniform State Law. Sections 84-3901 through 84-3907 are, with minor differences, enactments of sections 1 through 7 of the "Uniform Federal Tax Lien Registration Act" approved by the National Conference of Commissioners on Uniform State Laws in 1926, and adopted in Arkansas, California, Delaware, Idaho, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Mexico, New York, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah and Wyoming and also in Alaska and Hawaii.

84-3902. (2155.2) **Federal tax lien index.** When a notice of such lien is filed, the county clerk shall forthwith enter the same in an alphabetical federal tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax with the interest and penalties; he shall file and keep all original notices so filed in numerical order in a file or files and designated, federal tax lien notices.

History: En. Sec. 2, Ch. 8, L. 1927.

84-3903. (2155.3) **Entering discharge in index.** When a certificate of discharge of any tax lien issued by the collector of internal revenue or other proper officer, is filed in the office of the county clerk, where the original notice of lien is filed, said county clerk shall enter the same with date of filing in said federal tax lien index, on the line where notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien.

History: En. Sec. 3, Ch. 8, L. 1927.

Collateral References

Internal Revenue⇨1725.
47 C.J.S. Internal Revenue § 767.

84-3904. (2155.4) **Index and files—how furnished.** Said federal tax lien index and file or files for said federal tax lien notices shall be furnished to the county clerk of each county in this state, in the manner now provided by law for the furnishing of books in which deeds are recorded.

History: En. Sec. 4, Ch. 8, L. 1927.

Collateral References

Internal Revenue⇨1716.
47 C.J.S. Internal Revenue § 761.

84-3905. (2155.5) **Purpose of act.** This act is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of section 3186 of the Revised Statutes of the United States, as amended by the Act of March 4, 1913, 37 statutes at large, page 1016, and any acts or parts of acts amendatory thereof.

History: En. Sec. 5, Ch. 8, L. 1927.

Compiler's Note

Section 3186 of the Revised Statutes of the United States, as amended by the Act of March 4, 1913, referred to in this section, was superseded by provisions of the Internal Revenue Code of 1939, which in turn were superseded by provisions of the Internal Revenue Code of 1954. For present form of the federal statutes, see United States Code, Tit. 26, secs. 6321 to 6326.

84-3906. (2155.6) **Interpretation of act.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 6, Ch. 8, L. 1927.

Collateral References

Internal Revenue⇨1712.
47 C.J.S. Internal Revenue § 758.

84-3907. (2155.7) **Citation of act.** This act may be cited as the Uniform Federal Tax Lien Registration Act.

History: En. Sec. 7, Ch. 8, L. 1927.

CHAPTER 40

COUNTY ASSESSOR AND COUNTY CLERK—DUTIES IN RELATION TO COMPUTATION AND ENTRY OF TAXES

Section 84-4001. Assessor to enter valuations on assessment book.
84-4002. County clerk to prepare duplicate statement.
84-4003. Statement to be transmitted to state auditor and state board of equalization.
84-4004. County clerk to follow directions of state board of equalization.
84-4005. Assessor to compute and enter taxes—affidavit.

84-4006. County clerk's affidavit—delivery of book to assessor.
84-4007. Charging treasurer with taxes—delivery of assessment book to treasurer.
84-4008. County clerk to verify statements made by him.
84-4009. Transfer of assessment book from one treasurer to another—charging taxes.
84-4010. Collection of poll tax.
84-4011. Penalty for neglect of duty.
84-4012. County commissioners may dispense with duplicate book.
84-4013. State board may dispense with duplicate.

84-4001. (2156) **Assessor to enter valuations on assessment book.** Before delivering the assessment book to the county clerk as required by section 84-505 the assessor must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county.

History: En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3727.

Gross Amount of Assessments

When the assessments have been equalized and the necessary changes made, the clerk must sum up the values of the different kinds of property assessed to each owner, and also the gross amount of all assessments as fixed by the equalizations. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

Collateral References

Taxation⇨411.
84 C.J.S. Taxation § 456.

84-4002. (2157) **County clerk to prepare duplicate statement.** The county clerk must, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the board of county commissioners, duplicate statements, showing in separate columns:

1. The total value of all property;
2. The value of real estate, including mining claims, stated separately;
3. The value of the improvements thereon;
4. The value of personal property, exclusive of money;
5. The amount of money;
6. The number of acres of land, and the number of mining claims, stated separately.

History: En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R. C. M. 1921. Cal. Pol. C. Sec. 3728.

References

State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415; State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 767.

Collateral References

Taxation⇨436.
84 C.J.S. Taxation § 482.

84-4003. (2158) **Statement to be transmitted to state auditor and state board of equalization.** The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state board of equalization.

History: En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R. C. M. 1921. Cal. Pol. C. Sec. 3729.

Gross Sum of All Assessments

It is the duty of the county clerk to ascertain the gross sum of all assessments and transmit it to the state auditor and the state board of equalization. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

State ex rel. Board of Equalization v. Fortune, 24 M 154, 155, 60 P 1086; State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 767.

84-4004. (2159) **County clerk to follow directions of state board of equalization.** As soon as the county clerk receives from the state board of equalization a statement of any change or changes made by the board in the assessment books of the county, or in any assessment therein contained, he must make the corresponding change or changes in the assessment books, by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum, when more than fifty cents as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the board of county commissioners which is prohibited by section 84-413; provided, however, that if such assessment books are not in the possession of the county clerk at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county officer then having possession of such assessment books, and it shall be the duty of such county officer to immediately make the corresponding change or changes in such assessment in the manner herein provided.

History: En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1929. Cal. Pol. C. Sec. 3730.

Completion of Assessment Book

When the necessary corrections and additions have been made to it under the direction of the state and county board of equalization, the clerk must complete the assessment book by extending the tax so that the amount to be paid by each taxpayer for the year will be made to appear. State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

Increased Valuations

State board of equalization, which issued a directive to board of county commissioners and county assessor in November, 1963, requiring use of certain valuations on grades of farm land for 1964 and years thereafter, which the officials of the county refused to do, was entitled to mandamus to compel the county officials to comply with the directive. Alleged impossibility of compliance on July 22, 1964 was no defense. The officials had from November until the second Monday in August to accomplish the task but chose to do nothing except contest the matter. State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 769.

References

State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Anderson v. McClenathan, 62 M 387, 391, 205 P 230; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Morse v. Kroger, 87 M 54, 58, 285 P 185; State ex rel. State Board of Equalization v. Jacobson, 107 M 461, 463, 86 P 2d 9; Carlson v. Flathead County, 130 M 36, 293 P 2d 279, 283.

Collateral References

Taxation⇦438.
84 C.J.S. Taxation § 506.

84-4005. (2160) **Assessor to compute and enter taxes—affidavit.** The county assessor must then compute, and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the columns showing the total amount of such taxes, and

the columns of total value of property in the county, as corrected under the direction of the county and state board of equalization, and shall attach thereto his affidavit, by him subscribed as follows:

"I, ..., county assessor of the county of ....., do swear that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and the said assessment book to which this affidavit is affixed is full, true and correct, and made in the manner prescribed by law," and shall on or before the second Monday of October deliver the completed assessment book to the county clerk.

History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3731.

Amount Due from Each Taxpayer

After the necessary changes have been made and the assessments equalized, it is the duty of the clerk to calculate and extend to the proper column the amount due from each taxpayer for the year, at the combined rates fixed by the county board and the legislature. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

Anderson v. McClenathan, 62 M 387, 391, 205 P 230; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Morse v. Kroger, 87 M 54, 58, 285 P 185; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 768.

Collateral References

Taxation⇐430.
84 C.J.S. Taxation § 471.

84-4006. (2161) **County clerk's affidavit—delivery of book to assessor.** That within five (5) days after the second Monday in August the county clerk must attach to the book the following affidavit:

"I, ..., county clerk of the county of ....., do swear that I received the assessment book of the taxable property of the county from the county assessor with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state board of equalization," and deliver the book to the county assessor.

History: En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R. C. M. 1921; amd. Sec. 9, Ch. 96, L. 1923; amd. Sec. 2, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3732.

Sufficiency of Affidavit

The affidavit must cover all the facts showing that the county clerk has done his duty in taking the basis furnished by the assessor in entering the authorized corrections and extensions, and in making the copy furnished by him such as is required by law. State ex rel. City of Butte v. Weston, 29 M 125, 132, 74 P 415.

Time for Completion of Annual Roll

The limit of time during which the annual roll must be completed is provided for by this section. Carlson v. City of Helena, 39 M 82, 103, 102 P 39.

References

Anderson v. McClenathan, 62 M 387, 391, 205 P 230; Garry v. Martin, 70 M 587, 590, 227 P 573; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Sanderson v. Bateman, 78 M 235, 246, 253 P 1100; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 768.

Collateral References

Taxation⇐553.
84 C.J.S. Taxation § 659.

84-4007. (2163) **Charging treasurer with taxes—delivery of assessment book to treasurer.** On or before the third Monday of October the

county clerk must charge the treasurer with the full amount of taxes levied and deliver the original assessment book to the county treasurer.

History: En. Sec. 92, p. 107, L. 1891; re-en. Sec. 3847, Pol. C. 1895; re-en. Sec. 2611, Rev. C. 1907; re-en. Sec. 2163, R. C. M. 1921; amd. Sec. 10, Ch. 96, L. 1923; amd. Sec. 4, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3734.

References

Anderson v. McClenathan, 62 M 387, 391, 205 P 230; State ex rel. State Board of Equalization v. Koch, — M —, 401 P 2d 765, 768.

84-4008. (2164) **County clerk to verify statements made by him.** The county clerk must verify, by his affidavit attached thereto, all statements made by him under the provisions of this code.

History: En. Sec. 93, p. 107, L. 1891; re-en. Sec. 3848, Pol. C. 1895; re-en. Sec. 2612, Rev. C. 1907; re-en. Sec. 2164, R. C. M. 1921. Cal. Pol. C. Sec. 3735.

References

Anderson v. McClenathan, 62 M 387, 391, 205 P 230.

Collateral References

Taxation⇨433.
84 C.J.S. Taxation § 474.

84-4009. (2165) **Transfer of assessment book from one treasurer to another—charging taxes.** The county clerk, if the original assessment book or the delinquent tax list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the tax book.

History: En. Sec. 94, p. 107, L. 1891; re-en. Sec. 3849, Pol. C. 1895; re-en. Sec. 2613, Rev. C. 1907; re-en. Sec. 2165, R. C. M. 1921; amd. Sec. 11, Ch. 96, L. 1923. Cal. Pol. C. Sec. 3736.

84-4010. (2165.1) **Collection of poll tax.** Whenever any special poll tax shall be imposed as provided by the laws of this state, whether for road, poor or any other purpose, it shall be the duty of the county clerk to have suitable receipts for the same printed and to deliver said receipts to the county treasurer charging him with the same and it shall be the duty of the county treasurer to proceed to collect such poll tax as provided by law. The receipts herein provided for shall be bound in book form and shall be printed and written in triplicate. One copy of such receipt shall be delivered to the person paying the tax, one copy of each and all receipts shall be turned over to the county clerk at the end of each month to be preserved in his office; and one copy of each and all such receipts shall be permanently preserved in the office of the treasurer.

History: En. Sec. 1, Ch. 81, L. 1923.

Cross-References

Fire department members exempt from poll tax, sec. 11-2004.

Militia men exempt from poll tax, sec. 11-2004.

Collateral References

Taxation⇨556.
84 C.J.S. Taxation § 666.

84-4011. (2166) **Penalty for neglect of duty.** If the county clerk fails or neglects to perform the duties prescribed by sections 2584 and 2585 (section 84-708 of this code), he forfeits to the state five hundred dollars, to be recovered by action in the name of the state.

History: En. Sec. 95, p. 107, L. 1891; re-en. Sec. 3850, Pol. C. 1895; re-en. Sec. 2614, Rev. C. 1907; re-en. Sec. 2166, R. C. M. 1921.

NOTE.—Sections 2584 and 2585, now repealed, were sections of the 1907 Code relating to powers and duties of the state board of equalization and are in effect now superseded by section 84-708.

Collateral References

Taxation⇨564.
84 C.J.S. Taxation § 674.

84-4012. (2167) **County commissioners may dispense with duplicate book.** The board of county commissioners of any county may, in its discretion, dispense with the making or use of any duplicate assessment book mentioned in any part of this code; and in all cases where said duplicate assessment book is referred to, it is lawful to use and consider the original assessment book in all the requirements of every part of this code referring to the same, and all affidavits or other statements in reference to said duplicate assessment book must be substantially worded to conform to the use of the original assessment book.

History: En. Sec. 3851, Pol. C. 1895; re-en. Sec. 2615, Rev. C. 1907; re-en. Sec. 2167, R. C. M. 1921.

Application of Section

This section has no application to the duplicate required for the use of city treasurers; it refers to the duplicate necessary for county uses only. The fact that the county commissioners have dispensed with such duplicate assessment book does not prevent the county clerk from furnishing a duplicate for a city, though the original is to be used by the county treasurer. State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

84-4013. (2168) **State board may dispense with duplicate.** The state board of equalization may, by an order entered upon its minutes and certified to the county clerk of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book must perform all the offices of such duplicate, and must have like force and effect.

History: En. Sec. 4019, Pol. C. 1895; re-en. Sec. 2737, Rev. C. 1907; re-en. Sec. 2168, R. C. M. 1921.

CHAPTER 41

COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section 84-4101. Treasurer to publish notice of delinquency.
84-4102. Act not retroactive—computing penalties.
84-4103. Time for payment of taxes—penalty and interest.
84-4104. Special assessments for special improvements.
84-4105. Manner of publication of notice.
84-4106. Treasurer to note date and amount of payment.
84-4107. Receipt to be given.
84-4108. Payment of irrigation or drainage district assessment.
84-4109. Application of act.
84-4110. Payment of taxes of decedents—how enforced.
84-4111. Report of taxes collected and delinquent.
84-4112. When delinquent list must be completed.
84-4113. All matters on assessment book to be set down in numerical or alphabetical order.
84-4114. Credit to be given to treasurer on final statement, etc.
84-4115. Treasurer charged with delinquent taxes.
84-4116. Statement to be transmitted to the state board of equalization by the county clerk.
84-4117. Publication of notice of tax sales.
84-4118. Manner of making publication.

84-4119. Time and place of sale to be designated.
84-4120. Time and place of sale.
84-4121. Copy of publication and affidavit to be filed with the county clerk.
84-4122. Manner of conducting sale.
84-4123. Postponement.
84-4124. Designation of portion to be sold—sale to county—assignment of county's interest—validation of certificates.
84-4125. Resale when purchaser does not make payment.
84-4126. Bid of person once refusing to make payment not to be received.
84-4127. Treasurer to give purchaser a duplicate certificate of sale.
84-4128. Signature on certificate of sale and disposition of copies.
84-4129. Treasurer to enter in a book description of land sold.
84-4130. Lien of state when vests in purchaser—how alone divested.
84-4131. Refund to tax sale purchaser on declaration of sale as void—interest—liens of county and purchaser.
84-4132. Time for redemption.
84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after twenty years where no assignment of certificate or no action for tax deed taken.
84-4133. Redemption to be made in lawful money—credit to be given to whom.
84-4134. Treasurer's report of persons entitled to redemption and amount due each.
84-4135. Clerk to file and enter certificate of sale.
84-4136. When property is redeemed, clerk to note it in book.
84-4137. Treasurer's deed when property is not redeemed in time—charges for making an acknowledgment.
84-4138. Assignment of rights of county in property acquired at tax sale—form of certificate.
84-4139. Tax sales—application of preceding section—rights of holder of certificate.
84-4140. Disposal of money from sale or lease of tax deed lands.
84-4141. Sale of exchanged lands.
84-4142. Quieting title to lands acquired by county for taxes.
84-4143. Effect of act.
84-4144. Confirmation of tax deed—action for, authorized.
84-4145. Procedure.
84-4146. Notice of pendency of action.
84-4147. Defendants, rights of.
84-4148. Trial of action and judgment.
84-4149. Contents and form of deed.
84-4150. Title conveyed.
84-4151. Notice of application for tax deed.
84-4152. Taking of tax deeds by counties, cities and towns—notice of application—order of governing body required.
84-4153. Validation of tax deeds heretofore issued counties, cities and towns.
84-4154. Redemption from tax sales.
84-4155. Piecemeal redemption of land sold for taxes.
84-4156. Affidavit showing notice given—sum allowed therefor.
84-4157. Form of tax deed—deed prima facie evidence of what.
84-4158. Procedure in actions to quiet title to tax deed property.
84-4159. Unconstitutional.
84-4160. Validation of delinquent tax sales and sales of real property by counties.
84-4160.1. Validation of tax deeds.
84-4161. Title conveyed by deed—procedure to cure defects.
84-4162. Action to procure tax deed—taxes to be paid.
84-4163. Commencement of action—parties—contiguous and noncontiguous tracts.
84-4164. Lis pendens.
84-4165. Summons—form—service.
84-4166. Defense to action—redemption of parcels.
84-4167. Judgment by default not authorized—costs.
84-4168. Judgment—order to issue tax deed to plaintiff—effect of judgment.
84-4169. Form of tax deed issued on filing copy of decree with treasurer.
84-4170. Effect of deed.
84-4171. Assessment books, delinquent books, etc., prima facie evidence of what.

84-4172. Comparison of delinquent list with unpaid assessment.
84-4173. Oath administered to treasurer.
84-4174. Final settlement of treasurer with clerk.
84-4175. Treasurer's affidavit endorsed on list.
84-4176. Taxes, etc., illegally collected to be refunded.
84-4177. Concurrent remedies.
84-4178. When property assessed more than once.
84-4179. Land irregularly assessed, etc., not to be sold.
84-4180. Mistakes which do not affect sale of property for taxes.
84-4181. Collection of taxes from persons assessed, but removed to another county.
84-4182. Evidence on trial of suit for such taxes.
84-4183. Allowance and payment of expense of such proceeding.
84-4184. Protest against sale requisite, when assessment void in part, to invalidate sale or grant thereunder.
84-4185. Duty of treasurer on delivery of such protest.
84-4186. Assessment of property on which a tax sale certificate has been purchased by county and adjournment of sale thereof.
84-4187. No sale unless directed by board of county commissioners.
84-4188. Conditions of redemption of property sold to county.
84-4189. Distribution of such redemption moneys, accounts, etc.
84-4190. Sale of county tax deed lands—procedure—preferential repurchase rights.
84-4191. Terms of sale—sale contract—deed of conveyance.
84-4192. Land subject to taxation to purchaser—when.
84-4193. Unsold land—how disposed of—interest rate.
84-4194. Lease of lands not sold—royalty reserved in leases for mineral or oil and gas purposes—pooling agreement.
84-4195. Apportionment of proceeds of sales and leases.
84-4196. Confirmation of oil and gas leases heretofore made.
84-4197. Sale of lands less than fifty dollar valuation and other lands.
84-4198. Lessee of tax-deed lands has right within 30 days to purchase at appraised value.
84-4199. Validation of certain contracts for purchase of tax title lands.
84-41-100. Validation of tax deeds notwithstanding failure to classify lands.
84-41-101. Repealing and saving clause.
84-41-102. Saving clause.
84-41-103. Suspension of taxes on property owned by persons in military or naval service.
84-41-104. Affidavit to be filed with county treasurer.

84-4101. (2169) **Treasurer to publish notice of delinquency.** Within ten (10) days after the recipt of the assessment book, the county treasurer must publish a notice specifying:

1. That one-half (½) of all taxes levied and assessed will be due and payable before five o'clock p. m. on the 30th day of November next thereafter, and that unless paid prior thereto the amount then due will be delinquent and will draw interest at the rate of two-thirds (⅔) of one per centum (1%) per month from and after such delinquency, and two per centum (2%) will be added to the amount thereof as a penalty and that one-half (½) of all taxes levied and assessed will be due and payable on or before five o'clock p. m. on the 31st day of May next thereafter, and that unless paid prior to said date said taxes will be delinquent and will draw interest at the rate of two-thirds (⅔) of one per centum (1%) per month from and after such delinquency, and two per centum (2%) will be added to the amount thereof as a penalty.

2. The time and place at which payment of taxes may be made: And he must send to the last-known address of each taxpayer a postcard or other written notice, postage prepaid, showing the amount of taxes due

the current year, and the amount due and delinquent for other years; but any failure to give either notice will not affect the legality of the tax.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R. C. M. 1921; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931. Cal. Pol. C. Sec. 3746.

NOTE.—The penalty prescribed in this section has been changed to conform to Sec. 1, Ch. 30, Ex. Laws 1933, which read: "From and after the first day of March, 1934, the penalty on all delinquent ad valorem taxes or assessments shall be at the rate of two per cent (2%); provided, however, that nothing herein contained shall be deemed as in any manner whatsoever changing penalties imposed prior to the first day of March, 1934."

Failure to Notice Delinquencies Not Fatal to Certificate of Sale

Under this section, failure of county treasurer to notify taxpayer of amount of delinquent taxes due does not affect the legality of the tax, or warrant cancellation of a certificate of sale issued to the county. Smith v. Blaine County, 102 M 116, 119, 56 P 2d 179.

Mandatory and Exclusive Statutes

The procedure outlined in this chapter for the collection of property taxes and the enforcement of tax liens is mandatory and exclusive. Calkins v. Smith, 106 M 453, 457, 78 P 2d 74.

Notice of Delinquency

The notice mentioned in section 84-4105 is the same one referred to in subsection (1) of this section and not the one "mailed" to delinquent taxpayers as provided in subsection (2) of this section. Salvation Army v. State, 144 M 415, 396 P 2d 463, 466. (Dissenting opinion, 144 M 415, 396 P 2d 463, 466.)

Penalties and Interest

A taxpayer, after receiving a notice of delinquent taxes as provided by subsection (2) of this section, may not pay his delinquent taxes and then be relieved of the obligation to pay penalty and interest on said taxes. Salvation Army v. State, 144 M 415, 396 P 2d 463, 466. (Dissenting opinion, 144 M 415, 396 P 2d 463, 466.)

Failure of present county treasurer's predecessors to send plaintiff any notice "showing the amount of taxes due and delinquent for other years," as provided in subsection (2) of this section, did not relieve plaintiff of the obligation to pay the principal of the delinquent taxes, but did relieve plaintiff of any obligation to pay penalties and interest on said taxes because of the lack of such statutory notice. Salvation Army v. State, 144 M 415, 396 P 2d 463, 466. (Dissenting opinion, 144 M 415, 396 P 2d 463, 466.)

The phrase "legality of the tax" in subsection (2) of this section refers only to the tax itself and not to penalties and interest. Salvation Army v. State, 144 M 415, 396 P 2d 463, 466. (Dissenting opinion, 144 M 415, 396 P 2d 463, 466.)

References

County of Hill v. County of Liberty, 62 M 15, 17, 203 P 500; Thomas v. City of Missoula, 70 M 478, 483, 226 P 213; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Sanderson v. Bateman, 78 M 235, 246, 253 P 1100; Williams v. Harvey, 91 M 168, 6 P 2d 418; State ex rel. Malott v. Cascade County, 94 M 394, 411, 22 P 2d 811.

Collateral References

Taxation⇐516.
84 C.J.S. Taxation § 608.
51 Am. Jur. 831, Taxation, § 944.

84-4102. (2169.1) **Act not retroactive—computing penalties.** It is specifically provided that the provisions of this act are not retroactive and shall apply only to tax levies made on assessments levied from and after the first Monday in March, 1931.

In computing all penalties and delinquencies on the sale of property for the nonpayment of taxes, or the acquisition of tax titles, any levies heretofore made shall be computed on the basis of the then existing laws, but levies made on assessments for 1931 and thereafter shall be computed on the basis provided in this act for their respective portions, and all acts and parts of acts in conflict herewith are amended in accordance with the provisions of this act.

History: En. Sec. 3, Ch. 67, L. 1931.

Collateral References

Taxation⇐836.
85 C.J.S. Taxation § 1022.

84-4103. (2169.2) **Time for payment of taxes—penalty and interest.** All taxes levied and assessed in the state of Montana, except special assessments made for special improvements in towns and cities, shall be payable as follows: One-half (½) of the amount of such taxes shall be payable on or before five o'clock p. m. on the 30th day of November of each year, and one-half (½) on or before five o'clock p. m. on the 31st day of May of each year; provided that unless one-half (½) of such taxes are paid on or before five o'clock p. m. on the 30th day of November of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of two-thirds (⅔) of one per centum (1%) per month from and after such delinquency until paid and two per centum (2%) shall be added to the amount thereof as a penalty. All taxes due and not paid on or before five o'clock p. m. on the 31st day of May of each year shall be delinquent and shall draw interest at the rate of two-thirds (⅔) of one per centum (1%) per month from and after such delinquency until paid and two per centum (2%) shall be added to the amount thereof as a penalty.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; Sec. 1(a) amd. Sec. 1, Ch. 1, Ex. L. 1933.

NOTE.—The penalty prescribed in this section has been changed to conform to Sec. 1, Ch. 30, Ex. Laws 1933, which read: "From and after the first day of March, 1934, the penalty on all delinquent ad valorem taxes or assessments shall be at the rate of two per cent (2%); provided, however, that nothing herein contained shall be deemed as in any manner whatsoever changing penalties imposed prior to the first day of March, 1934."

Cross-Reference

Obstruction of the collection of taxes, penalty, sec. 94-1505.

Constitutionality

The title to chapter 96, Laws of 1923 (this section), "An act to fix the time and method of collecting taxes and interest thereon," sufficiently expresses the subject of the act—authorizing the semi-annual payment of taxes—to meet the requirements of section 23, article V of the constitution. Thomas v. City of Missoula, 70 M 478, 480 et seq., 226 P 213.

Applies to City Taxes

This section, providing for the semi-annual payment of "all taxes levied and assessed in the state," applies to city taxes as well as to county taxes. Thomas v. City of Missoula, 70 M 478, 480 et seq., 226 P 213.

Interest and Penalties Not Part of Tax

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

References

State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 160, 252 P 805; Sanderson v. Bateman, 78 M 235, 249, 253 P 1100; School District No. 1 v. City of Helena, 87 M 300, 306, 287 P 164; School District No. 12 v. Pondera County, 89 M 342, 347, 297 P 498; Williams v. Harvey, 91 M 168, 171, 6 P 2d 418; State ex rel. Malott v. Cascade County, 94 M 394, 410, 22 P 2d 811; Wheir v. Dye, 105 M 347, 351, 73 P 2d 209.

Collateral References

Taxation⚿526.
84 C.J.S. Taxation § 617.
51 Am. Jur. 830, Taxation, § 943 et seq.

Rights in respect of real estate taxes where property is taken in eminent domain. 45 ALR 2d 522.

DECISIONS UNDER FORMER LAW

Interest

While the interest rate provided by the 1923 law is one per cent per month, the section does not state or contemplate that interest shall only be computed in full months, treating each fractional part of a month as a whole. Certainly no one would claim that a note bearing "eight per cent per annum" would require the payment of a whole year's interest for each year, and each fractional part of a year. The interest under the section can only be charged until all delinquent taxes are paid. Glacier County v. Halvorson Mercantile Co., 93 M 520, 523, 19 P 2d 648.

84-4104. (2169.3) **Special assessments for special improvements.** Special assessments, or installments of special assessments, made for special improvements in towns and cities, duly and regularly made and levied by resolution, according to law, shall be payable on or before five o'clock p. m. on the 30th day of November of each year, and in the event the same are not paid on or before said date, the same shall be subject to the same interest and penalty for nonpayment as are or may hereafter be provided by the laws of the state of Montana for other delinquent taxes. The collection thereof shall be had and made as provided by section 11-2233, as the same is now in force or may be hereafter amended.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933.

Collateral References

Municipal Corporations⇨521.
63 C.J.S. Municipal Corporations § 1572.
48 Am. Jur. 761, Special or Local Assessments, § 256 et seq.

84-4105. (2170) **Manner of publication of notice.** The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities.

History: En. Sec. 3861, Pol. C. 1895; re-en. Sec. 2617, Rev. C. 1907; re-en. Sec. 2170, R. C. M. 1921. Cal. Pol. C. Sec. 3749.

NOTE.—The notice mentioned herein is the one contained in section 84-4101.

Notice of Delinquency

The notice mentioned in this section is the same one referred to in subsection (1) of section 84-4101, and not the one "mailed" to delinquent taxpayers as provided in section 84-4101, subsection (2). Salvation Army v. State, 44 M 415, 396 P 2d 463, 466. (Dissenting opinion, 144 M 415, 396 P 2d 463, 466.)

Collateral References

Taxation⇨569.
84 C.J.S. Taxation § 682.

84-4106. (2171) **Treasurer to note date and amount of payment.** The county treasurer must note the date and the amount of the payment of any tax in the assessment book opposite the name of the person paying.

History: En. Sec. 3862, Pol. C. 1895; re-en. Sec. 2618, Rev. C. 1907; re-en. Sec. 2171, R. C. M. 1921; amd. Sec. 3, Ch. 96, L. 1923. Cal. Pol. C. Sec. 3750.

Collateral References

Taxation⇨527.
84 C.J.S. Taxation § 620.

84-4107. (2172) **Receipt to be given.** He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

History: En. Sec. 97, p. 108, L. 1891; re-en. Sec. 3863, Pol. C. 1895; re-en. Sec. 2619, Rev. C. 1907; re-en. Sec. 2172, R. C. M. 1921. Cal. Pol. C. Sec. 3751.

Collateral References

Taxation⇨528½.
84 C.J.S. Taxation § 626.

84-4108. (2172.1) **Payment of irrigation or drainage district assessment.** It shall be the duty of the county treasurer of each county in which any irrigation or drainage district is located, in whole or in part, to collect and receipt for all taxes and assessments, levied by any such district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes, as provided in section 84-4103, pro-

vided, the treasurer shall receive from any taxpayer at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which such district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of such district tax or assessment, together with the penalty and interest to date of payment on such installment; provided that such payment shall not be deemed a redemption of said property from such tax sale, but shall be credited on account of any redemption that may thereafter be made. In case of any payment pursuant to this act, a separate tax receipt shall issue showing exactly what assessments have been paid and shall show that no other tax on said real estate has been received by said treasurer, and provided further, such county treasurer shall not collect or receive or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation or drainage district upon which an assessment for the purposes of such irrigation or drainage district has been levied, unless the said assessment levied for such irrigation or drainage district purposes be paid, as herein permitted and the receipt therefor presented to the county treasurer at the time such taxes are paid, or paid at the same time.

History: En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; amd. Sec. 1, Ch. 188, L. 1943.

Collateral References

Drains⇨85; Waters and Water Courses ⇨231.

28 C.J.S. Drains § 80; 94 C.J.S. Waters § 337.

17A Am. Jur. 426, Drains and Sewers, §§ 79-84; 30 Am. Jur. 661, Irrigation, §§ 91-93.

84-4109. (2172.2) **Application of act.** The provisions of this act, with reference to the payment of special assessments, including irrigation and drainage district assessments, shall apply in all cases, where such special assessments are delinquent at the date of the passage and approval of the act.

History: En. Sec. 2, Ch. 73, L. 1935.

84-4110. (2173) **Payment of taxes of decedents—how enforced.** The district court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

History: En. Sec. 98, p. 108, L. 1891; re-en. Sec. 3864, Pol. C. 1895; re-en. Sec. 2620, Rev. C. 1907; re-en. Sec. 2173, R. C. M. 1921. Cal. Pol. C. Sec. 3752.

Collateral References

Executors and Administrators⇨212.

34 C.J.S. Executors and Administrators § 380.

Cross-Reference

Personal property taxes to be paid before distribution of estate, sec. 91-3905.

84-4111. (2176) **Report of taxes collected and delinquent.** On the third Monday of December and on the third Monday of June of each year the county treasurer must make a report to the county clerk in detail, show-

ing the amount of taxes collected and a complete delinquent list of all persons and property then owing taxes, and the county clerk shall compare such report with the books of the county treasurer, and shall keep a record of such report in his office.

History: En. Sec. 101, p. 109, L. 1891; re-en. Sec. 3867, Pol. C. 1895; re-en. Sec. 2623, Rev. C. 1907; re-en. Sec. 2176, R. C. M. 1921; amd. Sec. 5, Ch. 96, L. 1923. Cal. Pol. C. Sec. 3758.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

Collateral References

Taxation⇦560.
84 C.J.S. Taxation § 672.

84-4112. (2177) **When delinquent list must be completed.** The county treasurer must, at the time specified in the preceding section, deliver to the county clerk a complete delinquent list of all persons and property then owing taxes.

History: En. Sec. 102, p. 109, L. 1891; re-en. Sec. 3868, Pol. C. 1895; re-en. Sec. 2624, Rev. C. 1907; re-en. Sec. 2177, R. C. M. 1921.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

84-4113. (2178) **All matters on assessment book to be set down in numerical or alphabetical order.** In the list so delivered must be set down, in numerical or alphabetical order, all matters and things contained in the assessment book and relating to delinquent persons or property.

History: En. Sec. 103, p. 109, L. 1891; re-en. Sec. 3869, Pol. C. 1895; re-en. Sec. 2625, Rev. C. 1907; re-en. Sec. 2178, R. C. M. 1921. Cal. Pol. C. Sec. 3760.

References

Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

84-4114. (2179) **Credit to be given to treasurer on final statement, etc.** The county clerk must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the county treasurer who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him an immediate account for any existing deficiency.

History: En. Sec. 104, p. 109, L. 1891; re-en. Sec. 3870, Pol. C. 1895; re-en. Sec. 2626, Rev. C. 1907; re-en. Sec. 2179, R. C. M. 1921. Cal. Pol. C. Sec. 3761.

References

Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

Collateral References

Taxation⇦557 (1).
84 C.J.S. Taxation § 664.

84-4115. (2180) **Treasurer charged with delinquent taxes.** After settlement with the county treasurer, as prescribed herein, the county clerk must charge the treasurer then acting with the amount of taxes then due on the delinquent tax list, and within three days thereafter deliver the list, duly certified, to the county treasurer.

History: En. Sec. 105, p. 109, L. 1891; re-en. Sec. 3871, Pol. C. 1895; re-en. Sec. 2627, Rev. C. 1907; re-en. Sec. 2180, R. C. M. 1921; amd. Sec. 6, Ch. 96, L. 1923. Cal. Pol. C. Sec. 3762.

References

Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

84-4116. (2181) **Statement to be transmitted to the state board of equalization by the county clerk.** Within ten days after each settlement the county clerk must transmit by mail a statement to the state board of equalization, in such form as it may require, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

History: En. Sec. 106, p. 109, L. 1891; re-en. Sec. 3872, Pol. C. 1895; re-en. Sec. 2628, Rev. C, 1907; re-en. Sec. 2181, R. C. M. 1921; amd. Sec. 7, Ch. 96, L. 1923. Cal. Pol. C. Sec. 3763.

References

Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

84-4117. (2182) **Publication of notice of tax sales.** On or before the last Monday of June of each year, the county treasurer must publish in the manner and for the time prescribed in sections 84-4118, 84-4119 and 84-4120, a notice specifying:

1. That at a given time and place (to be designated in the notice) all property in the county, upon which delinquent taxes are a lien, will be sold at public auction, unless prior to said time, said delinquent taxes, together with all interest, penalties and costs due thereon are paid;

2. A complete delinquent list of all persons and property in the county, now owing taxes, including all city and town property, as to which taxes, or taxes and assessments, are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination.

History: En. Sec. 107, p. 110, L. 1891; amd. Sec. 3873, Pol. C. 1895; amd. Sec. 1, p. 142, L. 1901; re-en. Sec. 2629, Rev. C. 1907; re-en. Sec. 2182, R. C. M. 1921; amd. Sec. 8, Ch. 96, L. 1923; amd. Sec. 1, Ch. 26, L. 1939. Cal. Pol. C. Sec. 3764.

NOTE.—See section 84-4727 providing that delinquent city and town taxes and assessments be certified to and included in tax sales made by county treasurer.

Notice to Nonresident

It is incumbent upon nonresident property owners to take notice that all property is taxed annually and that, unless the taxes are paid, the property will be sold at tax sale, irrespective of the fact that the owner requested a county treasurer, instead of the county assessor, to send tax notices to a certain address which request was ignored. Sutter v. Scudder, 110 M 390, 395, 103 P 2d 303.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Calkins v. Smith, 106 M 453, 457, 78 P 2d 74; Jensen Livestock Co. v. Custer County, 113 M 285, 292, 124 P 2d 1013; Glacier County v. United States, 99 F 2d 733, 735; United States v. Christensen, 218 F Supp 722, 724.

Collateral References

Taxation⇨658 (3).
85 C.J.S. Taxation § 793.
51 Am. Jur. 901, Taxation, § 1033 et seq.

Enforceability as between the parties of agreement to purchase property at tax sale for their joint benefit. 14 ALR 2d 1267.

Validity of notice of tax sale or of tax sale proceedings which fails to state tax year or kind of taxes covered by tax assessments. 43 ALR 2d 988.

84-4118. (2184) **Manner of making publication.** The publication must be made once a week for three successive weeks in such newspaper published in the county as the board of county commissioners directs. If there is no newspaper published in the county, then by posting a copy of the list in three public places.

History: En. Sec. 109, p. 110, L. 1891; re-en. Sec. 3875, Pol. C. 1895; re-en. Sec. 2631, Rev. C. 1907; re-en. Sec. 2184, R. C. M. 1921. Cal. Pol. C. Sec. 3766.

Sufficiency of Publication

Where a notice of sale for delinquent taxes was published December 30, 1895, and January 6 and 13, 1896, and the sale

took place January 27, 1896, the publication was for a sufficient time. This section does not require the commissioners to designate a paper for publication, but to direct the publication to be made in a certain paper. Conklin v. Cullen, 29 M 38, 43, 44, 74 P 72.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Thomas v. City of Missoula, 70 M 478, 226 P 213.

Collateral References

Taxation⊂660.
85 C.J.S. Taxation § 792.

What is "public place" within requirements as to posting of tax notices. 90 ALR 2d 1212, 1217, 1222, 1226.

84-4119. (2185) **Time and place of sale to be designated.** The publication must designate the time and place of sale.

History: En. Sec. 110, p. 110, L. 1891; re-en. Sec. 3876, Pol. C. 1895; re-en. Sec. 2632, Rev. C. 1907; re-en. Sec. 2185, R. C. M. 1921. Cal. Pol. C. Sec. 3767.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Thomas v. City of Missoula, 70 M 478, 226 P 213; Glacier County v. Schlinski, 90 M 136, 144, 300 P 270.

84-4120. (2186) **Time and place of sale.** The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be in front of the county treasurer's office.

History: En. Sec. 111, p. 110, L. 1891; re-en. Sec. 3877, Pol. C. 1895; re-en. Sec. 2633, Rev. C. 1907; re-en. Sec. 2186, R. C. M. 1921. Cal. Pol. C. Sec. 3768.

Cross-Reference

Manner of making publication of notice of tax sale, sec. 84-4118.

References

Conklin v. Cullen, 29 M 38, 44, 74 P 72; Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Thomas v. City of Missoula, 70 M 478, 226 P 213.

Collateral References

Taxation⊂655, 656.
85 C.J.S. Taxation §§ 800, 801.

Inclusion or exclusion of first and last days in computing time for giving notice of tax sale which must be given a certain number of days before a known future date. 98 ALR 2d 1422.

84-4121. (2187) **Copy of publication and affidavit to be filed with the county clerk.** The county treasurer, as soon as he has made the publication required by the preceding sections, must file with the county clerk a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places, designating the places therein, which affidavit is prima facie evidence of all the facts stated therein.

History: En. Sec. 112, p. 110, L. 1891; re-en. Sec. 3878, Pol. C. 1895; re-en. Sec. 2634, Rev. C. 1907; re-en. Sec. 2187, R. C. M. 1921. Cal. Pol. C. Sec. 3769.

References

United States v. Christensen, 218 F Supp 722, 724.

Collateral References

Taxation⊂662.
85 C.J.S. Taxation § 797.

84-4122. (2189) **Manner of conducting sale.** On the day fixed for sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the county treasurer, between the hours of ten o'clock a. m. and three p. m., must commence the sale of the property advertised, commencing at the head of the list, and continuing in alphabetical or numerical order of lots and blocks until completed.

History: Ap. p. Sec. 1732, 5th Div. Comp. Stat. 1887; amd. Sec. 36, p. 96, Ex. L. 1887; amd. Sec. 113, p. 111, L. 1891; amd. Sec. 3880, Pol. C. 1895; re-en. Sec. 2636, Rev. C. 1907; re-en. Sec. 2189, R. C. M. 1921.

Purchaser Does Not Have Whole Day to Appear

The purchaser does not have the whole day to appear, as the sale need continue only until the list of delinquent property in alphabetical or numerical order of lots or blocks is "completed" as provided under this section. Jensen Livestock Co. v. Custer County, 113 M 285, 290, 124 P 2d 1013.

References

Glacier County v. Schlinski, 90 M 136, 144, 300 P 270; United States v. Christensen, 218 F Supp 722, 724.

Collateral References

Taxation⇨672.
85 C.J.S. Taxation § 799.
51 Am. Jur. 912, Taxation, § 1045 et seq.

What constitutes a "public" sale. 4 ALR 2d 575.

84-4123. (2190) **Postponement.** He may postpone the day of commencing the sale from day to day; but the sale must be completed within three weeks from the day first fixed.

History: En. Sec. 114, p. 111, L. 1891; re-en. Sec. 3881, Pol. C. 1895; re-en. Sec. 2637, Rev. C. 1907; re-en. Sec. 2190, R. C. M. 1921.

Collateral References

Taxation⇨663.
85 C.J.S. Taxation § 802.

84-4124. (2191) **Designation of portion to be sold—sale to county—assignment of county's interest—validation of certificates.** The owner or person in possession of any real estate offered for sale for taxes due thereon may designate in writing to the county treasurer, prior to the sale, what portion of the property he wishes sold, if less than the whole, but if the owner or possessor does not make such a designation, then the county treasurer shall sell the said real estate so offered for sale in its entirety, and in case there is no purchaser in good faith for the same, as provided in this code, on the first day that the property is offered for sale, then the whole amount of the property assessed must be struck off to the county as the purchaser, and the duplicate certificate thereof delivered to the county treasurer and filed by him in his office. No charge must be made for the duplicate certificate when the county is a purchaser; and in such case, the county treasurer must make an entry "sold to the county" on the duplicate assessment book opposite the tax, and he must be credited with the amount thereof in the settlement. The interest of the county in any property purchased at a tax sale shall be assigned by the county treasurer as provided by section 84-4138, upon the payment of the taxes, penalties, costs and interest specified in said section. All certificates of sale heretofore issued to any county on the purchase by such county of real property sold at any delinquent tax sale and which certificates of sale are now held by such county, are hereby declared to be valid and subsisting certificates of sale for all purposes, notwithstanding any irregularities in the manner of publishing the delinquent tax list, or in holding such sale, or in selling such property or in the issuance of such certificates of sale, or in the form thereof, provided the taxes for which such property was sold were taxes authorized by law to be assessed against such property, and were lawfully assessed against the same and have not been paid.

History: En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd.

Sec. 1, Ch. 31, L. 1929; amd. Sec. 1, Ch. 170, L. 1947.

Constitutionality

The title to chapter 31, Laws of 1929, which amended this section, is sufficient as against contention that it offends against the provisions of section 23, article V of the constitution, in that it does not clearly express the legislative intent to deal therein with tax certificates. Martin v. Glacier County, 102 M 213, 217, 56 P 2d 742.

Duplicate Certificate

Where the county is the purchaser of property at tax sale, the treasurer is without authority to charge it fifty cents for the duplicate certificate of sale, and therefore the county may not, in its application for a tax deed, add such charge to the amount which the redemptioner must pay to redeem the property. Glacier County v. Halvorson Mercantile Co., 93 M 520, 523, 19 P 2d 648.

Interest and Penalties Not Part of Tax

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

Irregularities Cured by Validating Statute

In an action to enjoin a county treasurer from issuing a tax deed to city lots bought in by the county at delinquent tax sale, irregularities affecting general taxes for the year for nonpayment of which the property was sold, relied upon by appellant, were cured by this section, where the taxes were regularly levied and there was a substantial compliance with the statutes relative to notice and sale, thus rendering the certificate of sale immune to attack. Morse v. Kroger, 87 M 54, 59, 285 P 185.

Irregularities in sale of delinquent real property not affecting jurisdiction, were cured by this section validating certificates of sale, and section 84-4160.1 validating tax deeds theretofore issued. Martin v. Glacier County, 102 M 213, 220, 56 P 2d 742, distinguished in 31 F Supp 571, 577, 578.

Property May Be Struck Off to County

It is no longer the law that where there is no purchaser in good faith on the first day delinquent property is offered for sale, it must not be struck off to the county until the following day; therefore a tax sale certificate issued to the county in 1931 on the same day the property was offered for sale and struck off to the county was valid. Neither does the purchaser have the whole day to appear, as the sale need continue only until the list of delinquent property in alphabetical or numerical order of lots or blocks is "completed" under section 84-4122. Jensen Livestock Co. v. Custer County, 113 M 285, 290, 124 P 2d 1013.

Sale En Masse

A tax deed, showing on its face that it was based on a sale en masse of several noncontiguous parcels, was void. Casey v. Wright, 14 M 315, 319, 36 P 191; North Real Estate Loan & Title Co. v. Billings Loan & Trust Co., 36 M 356, 367, 93 P 40; Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 526, 134 P 302; Horsky v. McKennan, 53 M 50, 60, 162 P 376. The doctrine laid down in these cases was approved in Lindeman v. Pinson, 54 M 466, 470, 171 P 271.

Under this section as amended by chapter 46, Laws of 1923, a tax sale certificate issued to the county showing on its face that several parcels of land were sold en masse, is not void on its face, since thereunder the entire property assessed may be struck off to the county for want of purchasers. Skillen v. Harris, 90 M 389, 392, 3 P 2d 1054.

Sales to Counties

This section prohibits the county from becoming a competitive bidder at the sale of property for delinquent taxes, and it can only acquire it when there is no other purchaser in good faith; and the recitals in the deed must show the right of the county to take the property, and that it did not enter the lists as a competitive bidder for the same, otherwise the deed is void. The county cannot purchase lands at a tax sale unless authorized to do so by the statute, and a strict compliance with the statute must be had before the title of the owner can be divested. Rush v. Lewis and Clark County, 36 M 566, 569, 93 P 943, affirmed 37 M 240, 95 P 836.

A statement in a deed conveying land sold to a county for taxes, that the property was offered for sale "in accordance with law," being merely a conclusion of law, imparts no validity to the deed if the recitals therein show that the sale was had at public auction at which the county was a competitive bidder. Rush v. Lewis and Clark County, 37 M 240, 242, 95 P 836.

A tax deed to two or more noncontiguous tracts of land, showing on its face that the tracts were struck off to the county together, was not void for that reason, as this section provides that where there is no purchaser in good faith "the whole amount of the property must be struck off to the county." Rogers v.

Embleton, 90 M 134, 135, 300 P 296. See also Skillen v. Harris, 90 M 389, 3 P 2d 1054.

Statute Ineffective To Cure Irregularities in Tax Deed Void on Face

Chapter 31, Laws of 1929, amending this section, enacted to cure irregularities in the issuance of certificates of sale to lands struck off to the county on delinquent tax sales, has no application to a tax deed void on its face. Glacier County v. Schlinski, 90 M 136, 145 et seq., 300 P 270.

Taxes on Realty Not Collectible by Court Action

Taxes on real estate cannot be collected by civil action, but only through voluntary payment or sale of the property at tax sale. United States v. Christensen, 218 F Supp 722, 724.

References

Sanderson v. Bateman, 78 M 235, 246, 253 P 1100; School Dist. No. 12 v. Pondera County, 89 M 342, 346, 297 P 498; State ex rel. City of Billings v. Osten, 91 M 76, 80, 5 P 2d 562; State ex rel. Souders v. District Court, 92 M 272, 12 P 2d 852; State ex rel. Malott v. Cascade County, 94 M 394, 399 et seq., 22 P 2d 811; Anderson v. Mace, 99 M 421, 45 P 2d 771; Glacier County v. United States, 99 F 2d 733, 735.

Collateral References

Taxation⇐670, 679 (1).
85 C.J.S. Taxation §§ 807, 831.
51 Am. Jur. 893, Taxation, §1022 et seq.

Sale of property at tax sale for more or less than the amount of taxes, penalties and costs as affecting its validity. 147 ALR 1141.

Personal liability of tax official or his bond to purchaser at tax sale. 149 ALR 220.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.

Discretion of court to refuse confirmation of, or to set aside, tax sale, where all proceedings are in compliance with statutory requirements. 152 ALR 887.

DECISIONS UNDER FORMER LAW

Sales to Counties

Under this section, as amended (chapter 46, Laws of 1923), providing that where no purchaser appears on the first day set for delinquent tax sale, and "when the property is offered for sale thereafter" there is again no purchaser, it may be struck off to the county, a sale may not be made to the county on the first day but only on some subsequent day. Glacier County v. Schlinski, 90 M 136, 144, 300 P 270.

84-4125. (2192) **Resale when purchaser does not make payment.** If the purchaser does not pay the tax and costs before ten o'clock p. m. of the following day, the property, on the next sale day before the regular sale, must be resold for taxes and costs.

History: En. Sec. 116, p. 111, L. 1891; re-en. Sec. 3883, Pol. C. 1895; re-en. Sec. 2639, Rev. C. 1907; re-en. Sec. 2192, R. C. M. 1921.

Collateral References

Taxation⇐690.
85 C.J.S. Taxation § 821.

84-4126. (2193) **Bid of person once refusing to make payment not to be received.** The bid of any person refusing to make the payment for the property purchased by him must not be received on the sale of any property advertised in the delinquent tax list of that year.

History: En. Sec. 117, p. 111, L. 1891; re-en. Sec. 3884, Pol. C. 1895; re-en. Sec. 2640, Rev. C. 1907; re-en. Sec. 2193, R. C. M. 1921.

Collateral References

Taxation⇐674.
85 C.J.S. Taxation § 809.

84-4127. (2194) **Treasurer to give purchaser a duplicate certificate of sale.** After receiving the amount of taxes and costs, the treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and the

year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

History: En. Sec. 118, p. 111, L. 1891; re-en. Sec. 3885, Pol. C. 1895; re-en. Sec. 2641, Rev. C. 1907; re-en. Sec. 2194, R. C. M. 1921. Cal. Pol. C. Sec. 3776.

Year of Assessment

Where, from recitals in a tax deed, the year of the assessment was made apparent indirectly, the fact that it contained no direct statement imparting such information did not render the deed void. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 525, 134 P 302.

References

Sanderson v. Bateman, 78 M 235, 247, 253 P 1100; State ex rel. Malott v. Cascade County, 94 M 394, 400, 22 P 2d 811; United States v. Christensen, 218 F Supp 722, 724.

Collateral References

Taxation⇨686.
85 C.J.S. Taxation § 822.

84-4128. (2195) **Signature on certificate of sale and disposition of copies.** The certificate must be signed by the county treasurer, and one copy delivered to the purchaser and the other filed in the office of the county clerk.

History: En. Sec. 119, p. 112, L. 1891; re-en. Sec. 3886, Pol. C. 1895; re-en. Sec. 2642, Rev. C. 1907; re-en. Sec. 2195, R. C. M. 1921.

References

State ex rel. Malott v. Cascade County, 94 M 394, 400, 22 P 2d 811; United States v. Christensen, 218 F Supp 722, 724.

84-4129. (2196) **Treasurer to enter in a book description of land sold.** The county treasurer, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate.

If taxes are paid subsequent to prior tax sale certificate, before such taxes become delinquent, by anyone other than the record owner of the land or to whom the land was assessed, the county treasurer shall make an entry in such book, opposite the name of such record owner of the land, or to whom the land was assessed, the date of such payment, the name of the person making such payment, and the amount paid. Such book must be open to public inspection without fee during office hours when not in actual use.

History: En. Sec. 120, p. 112, L. 1891; re-en. Sec. 3887, Pol. C. 1895; re-en. Sec. 2643, Rev. C. 1907; re-en. Sec. 2196, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1939.

Collateral References

Taxation⇨684 (2).
85 C.J.S. Taxation § 819.

84-4130. (2197) **Lien of state when vests in purchaser—how alone divested.** On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and one per cent additional for each month that elapses from the date of the sale until redeemed.

History: En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R. C. M. 1921.

References

State ex rel. City of Billings v. Osten, 91 M 76, 80, 5 P 2d 562; United States v. Christensen, 218 F Supp 722, 725, 729.

Collateral References

Taxation⇨730.
85 C.J.S. Taxation § 905.

84-4131. (2197.1) **Refund to tax sale purchaser on declaration of sale as void—interest—liens of county and purchaser.** Where a sale of land for delinquent taxes thereon, is declared void by judgment of court for irregularity in the assessment, levy or sale, the money paid by the purchaser at the sale, or by any assignee of the state, county, city, town, or district, upon taking the assignment shall, with interest at the rate of eight (8) per cent per annum, from the date of such payment, be refunded to the purchaser or owner of such tax certificate, upon the order of the chairman of the board of county commissioners of the county in which such lands lie; and the county shall then have a lien upon said property for the legal taxes on said property for the year in which it was sold together with the penalty and interest, and so much of such money as has been paid to the state, city, town or district by the treasurer of such county shall be charged to the state, city, town or district by such treasurer, and deducted from the next money due the state, city, town or district respectively on account of taxes paid or collected; provided, further, that purchasers of such certificate or owners thereof by assignment, where sales have been made by cities or towns, which by resolution or ordinance collect their own taxes, instead of having the same collected by the county treasurer, shall be reimbursed, in similar manner and in similar circumstances, out of the city or town treasury, upon order of the mayor, with proper charges and deductions against the respective funds of the said city or town, upon the next collection of taxes by said city or town; and, provided, further, that if such purchaser or owner of such certificate, after such purchase or assignment from the state, county, city, town or district, have paid the taxes, penalty and interest upon such piece or parcel of land, he or his assignee thereof, shall have a lien upon such piece or parcel for the amount of taxes, penalty and interest so paid, with interest as now provided by law to be collected upon delinquent taxes, which lien shall have the same priority as is now provided by law; and if he is in possession of such piece or parcel of land, he shall not be ejected therefrom until such amount and interest and penalty shall be paid.

History: En. Sec. 1, Ch. 131, L. 1927.

Collateral References

Taxation⇨821 (1-3).

85 C.J.S. Taxation § 1008.

51 Am. Jur., Taxation, p. 978, § 1135 et seq.; p. 1005, § 1167 et seq.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where tax sale proves invalid. 77 ALR 824 and 116 ALR 1408.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Permissive or mandatory character of legislation providing for refund of taxes illegally assessed or collected. 103 ALR 817.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Assignability of claim for tax refund, and rights of assignee in respect thereof. 134 ALR 1202.

84-4132. (2201) **Time for redemption.** A redemption of the property sold may be made by the owner, or any party having any interest in or lien upon such property, within thirty-six (36) months from the date of purchase, or at any time prior to the giving of the notice and the application for a deed as provided in this act.

History: En. Sec. 122, p. 113, L. 1891; amd. Sec. 3889, Pol. C. 1895; re-en. Sec. 2645, Rev. C. 1907; re-en. Sec. 2201, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1933;

amd. Sec. 1, Ch. 39, L. 1941. Cal. Pol. C. Sec. 3780.

Loss of Right to Redeem

Where right of redemption is not exercised before issuance of tax deed, the right of redemption is lost. Beckman Bros. v. Weir, 120 M 305, 184 P 2d 347, 348.

Mining Property

Under the provisions of section 93-2829 where a mining company neglected to pay its taxes, a cotenant, having a right to operate the mining property and pay all expenses of such operation and account to other cotenants, had sufficient interest in patented mining claims, separately assessed to the mining company, to permit her to redeem the property from a tax sale. Dudley v. Higgins, 141 M 140, 375 P 2d 689, 691.

Payment of Amount Due by County Treasurer

Where a county treasurer, on the last day on which redemption of property from tax sale could be made, on the strength of a telegram received by him from the attorneys of the delinquent owner that on that day a check covering the redemption money had been mailed in New York City, paid the amount due out of his own funds and mailed a certificate of redemption to the attorneys, although under section 84-4133, redemption must be made in lawful money, there was a clear violation of his official duty, and the district court committed error in dismissing the action of the holder of the certificate of sale to the property seeking to compel the treasurer by writ of mandate to issue to him a tax deed thereto. State ex rel. Bell v. McCullough, 85 M 435, 438, 279 P 246.

Right to Redeem

The right to redeem property from tax sale is wholly statutory and the statutes relating to redemption must be liberally construed, but the person seeking to redeem must bring himself within their provisions. State ex rel. Bell v. McCullough, 85 M 435, 438, 279 P 246. See also State ex rel. Federal Land Bank of Spokane v. Hays, 86 M 58, 282 P 32 to the same effect.

This section provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed." Section 84-4170 mentions "the date of the expiration of the period for redemption," but since under section 84-4151, the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in section 84-4170 is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 397, 154 P 2d 279.

In addition to the right to redemption before the issuance of a tax deed, the law gives the former owner a preferential right to purchase the property from the county after the issuance of a tax deed by complying with section 84-4190. Beckman Bros. v. Weir, 120 M 305, 184 P 2d 347, 348.

References

Hinz v. Musselshell County, 82 M 502, 513, 267 P 1113; State ex rel. Malott v. Board of County Commrs., 86 M 595, 601, 285 P 932; State ex rel. Malott v. Board of County Commrs. of Cascade County, 89 M 37, 60, 296 P 1; State ex rel. City of Billings v. Osten, 91 M 76, 80, 5 P 2d 562; State ex rel. Malott v. Cascade County, 94 M 394, 401, 22 P 2d 811; State ex rel. Jensen Livestock Co. v. Hyslop, 111 M 122, 125, 107 P 2d 1088; Jensen Livestock Co. v. Custer County, 113 M 285, 294, 124 P 2d 1013; Glacier County v. United States, 99 F 2d 733, 735; United States v. Christensen, 218 F Supp 722, 725.

Collateral References

Taxation⇨699.
85 C.J.S. Taxation § 852.
51 Am. Jur. 953, Taxation, § 1097 et seq.

Right of receiver to exercise insolvent's right to redeem from tax sale. 35 ALR 262.

Right of person under disability to redeem from tax sale. 65 ALR 582 and 159 ALR 1467.

Public officer's right to redeem from tax sale for benefit of owner. 66 ALR 1035.

Constitutionality, construction, and application of statutes providing for partial or proportional redemption from tax sale of land. 145 ALR 1328.

Retroactive application, to previous sales, of statutes reducing period of redemption from tax sales, as unconstitutional impairment of contract obligations. 147 ALR 1123.

Erroneous information by official as excusing taxpayer's failure to redeem in time. 21 ALR 2d 1273.

Who may redeem from a tax foreclosure or sale, property to which title or record ownership is held by corporation. 54 ALR 2d 1172.

Applicability of tax redemption statutes to separate mineral estates. 56 ALR 2d 621.

84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after twenty years where no assignment of certificate

or no action for tax deed taken. That from and after the passage and approval of this act, any hospital, charitable corporation, or nonprofit association having an equitable or legal interest in real estate heretofore sold for taxes or assessments to any county, or which has been struck off to any county when the property was offered for sale, or to which real property a lien for taxes or assessments has attached, and where such sale or tax lien is more than twenty (20) years old, and no assignment of the certificate of such sale or of said tax lien has been made, and no action for the issuance of a tax deed has been taken, shall be permitted to redeem the same and pay such tax lien, by paying the original tax or assessment due thereon, without the payment of any penalty or interest thereon. Such redemption of tax sale or payment of tax lien must be made on or before the 1st day of December, 1957, if it is to be made without the payment of penalty or interest. This act shall not apply to the purchaser of any certificate of sale made prior to the passage and approval of this act.

History: En. Sec. 1, Ch. 112, L. 1957.

84-4133. (2202) **Redemption to be made in lawful money—credit to be given to whom.** Redemption must be made in lawful money, and when paid to the county treasurer, he must credit the amount paid to the person named in the county treasurer's certificate, and pay it on demand to the person or his assignees.

History: En. Sec. 123, p. 113, L. 1891; re-en. Sec. 3890, Pol. C. 1895; re-en. Sec. 2646, Rev. C. 1907; re-en. Sec. 2202, R. C. M. 1921. Cal. Pol. C. Sec. 3781.

References

State ex rel. Bell v. McCullough, 85 M 435, 438, 279 P 246.

Collateral References

Taxation⇐710.
85 C.J.S. Taxation § 877.
51 Am. Jur. 956, Taxation, § 1100.

84-4134. (2203) **Treasurer's report of persons entitled to redemption and amount due each.** In each report the treasurer makes to the board of county commissioners he must name the persons entitled to redemption money, and the amount due to each.

History: En. Sec. 124, p. 113, L. 1891; re-en. Sec. 3891, Pol. C. 1895; re-en. Sec. 2647, Rev. C. 1907; re-en. Sec. 2203, R. C. M. 1921.

Collateral References

Taxation⇐712.
85 C.J.S. Taxation § 878.

84-4135. (2204) **Clerk to file and enter certificate of sale.** On receiving the certificate of sale, the county clerk must file it and make an entry in a book similar to that required of the treasurer.

History: En. Sec. 125, p. 113, L. 1891; re-en. Sec. 3892, Pol. C. 1895; re-en. Sec. 2648, Rev. C. 1907; re-en. Sec. 2204, R. C. M. 1921.

Collateral References

Taxation⇐711.
85 C.J.S. Taxation § 878.

84-4136. (2205) **When property is redeemed, clerk to note it in book.** On the presentation of the receipt of the person named in the certificate or of the county treasurer for his use, of the total amount of redemption money, the county clerk must mark the word "redeemed," the date, and by

whom redeemed, on the certificate and in the margin of the book where the entry of the certificate is made.

History: En. Sec. 126, p. 113, L. 1891; re-en. Sec. 3893, Pol. C. 1895; re-en. Sec. 2649, Rev. C. 1907; re-en. Sec. 2205, R. C. M. 1921.

84-4137. (2206) **Treasurer's deed when property is not redeemed in time—charges for making an acknowledgment.** If the property is not redeemed in the time allowed by law for its redemption, the county treasurer, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The county treasurer is entitled to receive from the purchaser, for the use of the county, three dollars for making such deed. No charge must be made by the county treasurer for the making of any such deed where the county is the purchaser; and the acknowledgment of all such deeds, as provided in section 84-4124, must be taken by the county clerk free of charge.

History: En. Sec. 127, p. 113, L. 1891; re-en. Sec. 3894, Pol. C. 1895; re-en. Sec. 2650, Rev. C. 1907; re-en. Sec. 2206, R. C. M. 1921. Cal. Pol. C. Sec. 3785.

References

McKenzie v. Evans, 96 M 1, 12 et seq., 29 P 2d 657.

Collateral References

Taxation⇐748, 765.
85 C.J.S. Taxation §§ 923, 941.

84-4138. (2207) **Assignment of rights of county in property acquired at tax sale—form of certificate.** At any time after any parcel of land has been bid in by the county as the purchaser thereof for taxes, as provided in section 84-4124, the same not having been redeemed, the county treasurer shall assign all the right of the county therein, acquired at such sale, to any person who shall pay the amount for which the same was bid in, with interest upon the original tax at the rate of two-thirds (⅔) of one per cent per month, and the amount of all subsequent delinquent taxes, penalties, costs, and interest, as provided by law, upon the same from time to time when such tax became delinquent. He shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., The treasurer of the county of ...., State of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19....., in the county of ...., and which sale was held on the ..... day of ..... 19....., for the purpose of liquidating said assessment, the following described parcel of land, situate in said county of ....., State of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ....., and the same still remaining unredeemed, and on this day ..... having paid into the treasury of said county the amount for which the same was

bid in, together with all subsequent delinquent taxes, penalties, costs, and interest, amounting in all to ..... dollars;

Now, therefore, in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title and interest of the county of ....., State of Montana, acquired in said lands under and by virtue of said sale, to the said ...., his heirs and assigns, forever, together with all the rights, powers, and privileges of the said county of ..... to take steps to receive a deed thereof, or receive payment in case of a redemption, subject, however, to redemption as provided by law.

Witness my hand and official seal of office this ..... day of ....., 19.....

.....

County Treasurer."

Provided, that in case the certificate hereinabove described shall by accident become lost or destroyed by the assignee, then in such an event the county treasurer shall issue a duplicate certificate to the assignee after the said county treasurer is convinced that the said certificate has been lost or destroyed and after the said assignee has made an affidavit to that effect.

History: En. Sec. 1, Ch. 151, L. 1917; re-en. Sec. 2207, R. C. M. 1921; amd. Sec. 1, Ch. 101, L. 1937; amd. Sec. 1, Ch. 24, L. 1939; amd. Sec. 1, Ch. 11, L. 1947.

Interest and Penalties Not Part of Tax

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

Irrigation District Land Acquired at Tax Sale

The county treasurer is without authority to assign the right of his county to irrigation lands acquired by it at tax sale under either the irrigation district law as it was prior to July, 1920, when the district sold its bonds, or under this section, a general statute, which provides that where a county has bid in a parcel of land for "taxes" the treasurer shall assign its right to any person willing to pay the amount due, irrigation district assessments not being taxes within the meaning of the section. (Justices Stewart and Angstman dissenting.) State ex rel. Malott v. Cascade County, 94 M 394, 402 et seq., 22 P 2d 811.

It is the duty of a county which holds irrigation district lands acquired at tax sale to apply for tax deed, sell the land as speedily as possible and distribute the proceeds agreeably to equity, and where it has disposed of such land by assignment of its right under this section, it must return the purchase price. State ex rel. Malott v. Cascade County, 94 M 394, 402 et seq., 22 P 2d 811.

References

Sanderson v. Bateman, 78 M 235, 247, 253 P 1100; State ex rel. City of Billings v. Osten, 91 M 76, 80, 5 P 2d 562; McKenzie v. Evans, 96 M 1, 12 et seq., 29 P 2d 657; Anderson v. Mace, 99 M 421, 45 P 2d 771; Christofferson v. Chouteau County, 105 M 577, 584, 74 P 2d 427; Calkins v. Smith, 106 M 453, 459, 78 P 2d 74.

Collateral References

Taxation⇦742.
85 C.J.S. Taxation § 917.

84-4139. (2208) **Tax sales—application of preceding section—rights of holder of certificate.** The provisions of this act shall apply to any sales of land for which a treasurer's deed shall not at the time of the passage hereof have actually issued, regardless of whether the sale shall have been made at any date heretofore, as well as to future sales for recovery of taxes; and the holder of any such certificate shall therefore have the same rights, powers, and privileges with regard to securing a deed as any purchaser of lands at tax sale may now have.

History: En. Sec. 2, Ch. 151, L. 1917; re-en. Sec. 2208, R. C. M. 1921.

References

State ex rel. Malott v. Cascade County, 94 M 394, 402, 22 P 2d 811.

84-4140. (2208.2) **Disposal of money from sale or lease of tax deed lands.** All moneys received from the sale or leasing of any such lands, or of any lands received in exchange, shall be paid into the county treasury and shall be credited to each fund as the same would have been credited had the moneys so received been paid as taxes upon said land acquired by the county by tax deed, or upon the lands exchanged, and any surplus after paying all taxes with interest and penalties shall belong to the county.

History: En. Sec. 2, Ch. 65, L. 1933.

References

Sanborn v. Lewis and Clark County, 113 M 1, 20, 120 P 2d 567.

Collateral References

Taxation⇨682, 683.
85 C.J.S. Taxation §§ 816, 817.

84-4141. (2208.3) **Sale of exchanged lands.** As to any lands received by the county in exchange the same may be sold or leased the same as might have been done with the lands exchanged.

History: En. Sec. 3, Ch. 65, L. 1933.

Collateral References

Taxation⇨679 (5).
85 C.J.S. Taxation § 838.

84-4142. (2208.4) **Quieting title to lands acquired by county for taxes.** Any county which has acquired, or may acquire, title to any land by tax deed may commence an action in the county to quiet title thereto, and in such action several tracts of land contiguous or noncontiguous may be included in one complaint, and all persons claiming any title to, interest in, or lien upon any of said lands may be joined as defendants. The procedure in such action shall be as provided in sections 93-6203 to 93-6211. It shall be the duty of the county attorney, upon request of the board of county commissioners of the county, to promptly commence and prosecute to final judgment any and all such actions.

History: En. Sec. 4, Ch. 65, L. 1933.

Compiler's Note

Sections 93-6206 to 93-6208, contained in the reference to sections 93-6203 to 93-6211 in this section, were repealed by Sec. 2, Ch. 189, Laws 1963.

Collateral References

Taxation⇨793.
85 C.J.S. Taxation § 968.

84-4143. (2208.5) **Effect of act.** Nothing in this act shall be held or construed to be as an amendment or modification of the provisions of section 84-4161.

History: En. Sec. 5, Ch. 65, L. 1933.

Collateral References

Taxation⇨778, 784, 785.
85 C.J.S. Taxation §§ 905, 906.

Necessity of consent of court to tax sale of property in custody of court or of receiver or trustee appointed by it. 3 ALR 2d 893.

84-4144. Confirmation of tax deed—action for, authorized. Whenever the validity of any tax deed heretofore issued appears doubtful, the county or person to whom such deed was issued, or its or his assigns or successors

in interest may, in addition to all other methods now provided by law, bring and maintain an action in the district court of the county in which said real property is situated for the purpose of acquiring a confirmation deed from the county treasurer and to quiet title to the lands to be covered thereby; which said action shall be brought and, except as herein provided, shall be prosecuted as other civil actions. Any action now pending to quiet title to lands covered by tax deeds may be amended to conform to this act.

History: En. Sec. 1, Ch. 43, L. 1945.

Cross-Reference

Application of Montana Rules of Civil Procedure to action for confirmation of tax deed, see M. R. Civ. P., Rule 81(a), Table A.

References

United States v. Christensen, 218 F Supp 722, 725.

Law Review

Tax Titles in Montana, 20 Mont. L. Rev. 73 (Fall 1958).

84-4145. Procedure. The actions shall be commenced by the filing of a verified complaint in which the party bringing the same shall be named as plaintiff and all persons having any interest in said land, whose interest shall appear of record in the office of the county clerk of the county in which the property is situated, together with the county treasurer, shall be named as defendants; and plaintiff shall also join as defendants all persons unknown who might make any claim to said real property by adding in the caption of the complaint in such action the words "and all unknown heirs and devisees of any defendant who may be deceased and all other persons unknown, claiming, or who might claim any right, title, estate or interest in, or lien or encumbrance upon the real property described in the complaint, or any thereof, adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued." The complaint shall, among other things, allege the description of the lands involved, that the said lands were duly assessed, that said taxes become delinquent, said land was sold for said taxes, that a tax deed or deeds to said lands has been heretofore issued and the general allegation that defendants have or claim some right, title, claim or interest in said land or in parts and parcels thereof adverse to plaintiff's claim and title thereto. If the county be the plaintiff, said action shall be brought in the name of the county. Several tracts of land, contiguous or noncontiguous and whether owned by different defendants or owners, and whether sold at the same time or at different times, may be included in one action, and all persons claiming title to or interest in or lien upon any of said lands, or any part thereof, although their said claims are independent and not in common and do not cover the same tracts, may be joined as defendants.

History: En. Sec. 2, Ch. 43, L. 1945.

84-4146. Notice of pendency of action. Upon the filing of the complaint, a notice of the pendency of said action shall be filed in the office of the county clerk of the county in which the action is brought.

History: En. Sec. 3, Ch. 43, L. 1945.

84-4147. Defendants, rights of. Any defendant may appear in said action within the time provided by law for appearances in civil actions and

may set upon any defense to said action he may have. Any defendant having an interest in said land as owner, encumbrancer, or otherwise, may therein question the legality, validity or sufficiency of the assessment or sale of said land and the tax deed formerly issued.

If upon the trial of said action, the court shall find that the former tax deed is invalid, then any such defendant may make redemption of the land in which he shall have an interest by paying the total amount of delinquent taxes from, but including, the year said taxes first became delinquent to and including the current year with penalties and interest as provided by law from date of delinquency, together with costs and expenses of the suit; said payment to be made within such time as may be ordered by the court, but not exceeding 10 days. If such payment be made, the county treasurer shall issue a certificate of redemption for said land so redeemed and the action as to said land and said defendant shall be dismissed. If said payment is not made as provided, then said defendant shall not be heard further in said action.

History: En. Sec. 4, Ch. 43, L. 1945.

References

United States v. Christensen, 218 F Supp 722, 725.

84-4148. Trial of action and judgment. Upon the trial of said action, the court shall require proof of the facts alleged in the complaint and other pleading in said action, and by its judgment the court shall ascertain and determine by proper findings that the land was duly assessed, that said land was duly sold for the delinquent taxes, that said lands nor any part thereof has been redeemed from said sale, and that a tax deed or deeds to said lands has been heretofore issued and said judgment shall order and direct the county treasurer of said county to issue to the plaintiff a confirmation deed of conveyance for said land and that said judgment so entered and the deed issued, as directed therein, shall be binding and conclusive upon the defendants therein named and upon all persons claiming under any of them; and from and after the entry of said judgment all defendants therein named and all persons claiming under any of said defendants, including all unknown persons, shall be forever barred and enjoined from claiming or asserting any claim of any kind or nature whatsoever existing at the time of the entry of said judgment in or to the lands involved in said action, or to any part or parcel thereof, and shall decree that the plaintiff is the owner of said land free and clear of all and every claim of said defendants.

History: En. Sec. 5, Ch. 43, L. 1945.

84-4149. Contents and form of deed. Upon filing with the county treasurer a certified copy of the judgment, he must issue to the plaintiff a deed for the lands described in the judgment, which deed in substance shall be as follows:

"This indenture, made by and between ..... (insert name of treasurer), county treasurer of the county of ..... (insert name of county) in the State of Montana, the party of the first part, and ..... (insert name of grantee) the party of the second part, witnesseth:—

Whereas the lands and premises hereinafter described have been heretofore duly and regularly assessed to the then owners thereof, that said taxes were not paid and said property was sold for the payment of said taxes for the amount thereof, and certificates of sale were duly issued to the purchaser of said lands and filed as required by law, and,

Whereas, heretofore proceedings were had under which a tax deed for said land was issued to ..... (name of grantee) and that the validity of said deed is doubtful, and

Whereas, by virtue of a judgment and decree entered by the district court of the ..... judicial district of the State of Montana in and for the county of ..... on the ..... day of ...., A. D., ..., wherein ..... was plaintiff and ..... and others were defendants, a certified copy thereof being filed in my office, I, the said county treasurer aforesaid, am ordered and directed to issue this deed of conveyance for said lands.

Now, therefore, I, ... (name of treasurer), of the county of ....., in the State of Montana, for and in consideration of the sum of said taxes, penalties and interest paid on said property and in conformity to said judgment, do grant and convey to ..... (insert name of grantee) of ..... all the lands and premises situated in the county of ..... in the State of Montana and described as follows:

..... Insert Description .....

Witness my hand and seal this ..... day of ....., 19.....
(seal)

.....
County Treasurer of ..... County, Montana.

State of Montana,
County of ..... } ss.

On this ..... day of ..... A. D., ... before me ....., a Notary Public for the State of Montana personally appeared ..... personally known to me to be the county treasurer of the county of ....., Montana, and acknowledged to me that he, as such county treasurer, executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.
(seal) ....."

History: En. Sec. 6, Ch. 43, L. 1945.

84-4150. Title conveyed. The deed issued pursuant to this act shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period of redemption, free of all encumbrances and clear of any and all claims of all of said defendants to said action, and of all persons claiming under them, except the lien for taxes subsequently attached and other liens and assessments now specified and provided by law.

History: En. Sec. 7, Ch. 43, L. 1945.

References

United States v. Christensen, 218 F Supp 722, 725.

84-4151. (2209) **Notice of application for tax deed.** The purchaser of property sold for delinquent taxes or his assignee must, at least sixty (60) days previous to the expiration of the time for redemption, or at least sixty (60) days before he applies for a deed, serve upon the owner of the property purchased, if known, and upon the person occupying the property, if the said property is occupied, and, if the records in the office of the county clerk and recorder show an unreleased mortgage or mortgages upon the property purchased, upon the mortgagee or mortgagees named in said mortgage or mortgages, or if assigned, upon the assignee or assignees of said mortgage or mortgages, a written notice, stating that said property, or a portion thereof, has been sold for delinquent taxes, giving the date of sale, the amount of property sold, the amount for which it was sold, the amount due, and the time when the right of redemption will expire, or when the purchaser will apply for a tax deed, and the owner of the property, or the mortgagee, or the assignee of said mortgagee has the right of redemption indefinitely until such notice has been given and the deed applied for, upon the payment of fees, percentages, penalties and costs required by law. Notice of any owner, mortgagee or assignee of mortgagee shall be given by registered letter addressed to such mortgagee or assignee at the post-office address of said owner, mortgagee or assignee as disclosed by the mortgage records in the office of the county clerk and recorder. In case of unoccupied property, or a mining claim, such notice must be by registered mail deposited in the post office, addressed to any known owner residing in or outside of said county with the postage thereon prepaid, at least sixty (60) days before the expiration of the time for redemption, or at least sixty (60) days before the purchaser applies for such tax deed, in addition to notice to the mortgagee or assignee of mortgagee in the manner, and as hereby is provided; provided, that in all cases where the post-office address of the owner, mortgagee, or assignee is unknown, the applicant shall publish once a week for two (2) successive weeks in a newspaper published in the county where the property is situated, a notice substantially in the following form:

Notice of Application for Tax Deed

Notice is hereby given that the undersigned will on the ..... day of ..... 19..... apply to the county treasurer of ..... county for a tax deed to the following described property, to wit:

(Describe property)

Amount due $.....

Date .....

.....

Applicant.

The first publication of such notice must be made at least sixty (60) days before the date of redemption or application for said deed. In all cases due proof of service of notice in whatever manner given, supported by the affidavit required by law, must be filed immediately with the clerk

and recorder of the county in which the property is situated, and be kept as a permanent file in his office, and such proof of notice when so filed shall be prima facie evidence of the sufficiency of the notice.

History: En. Sec. 128, p. 114, L. 1891; amd. Sec. 3895, Pol. C. 1895; amd. Sec. 1, Ch. 79, L. 1905; re-en. Sec. 2651, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1917; amd. Sec. 1, Ch. 87, L. 1921; re-en. Sec. 2209, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1929; amd. Sec. 1, Ch. 190, L. 1933.

Cross-Reference

Fees for tax deeds, sec. 25-234.

Action In Rem

In effect, an application for tax deed is an action in rem, to which all persons interested in the property involved are parties defendant. Under our law as it now stands, the holder of a tax sale certificate can use this informal method of procedure, or can take the more formal method of bringing an action in the district court under sections 84-4162 et seq. State ex rel. Freebourn v. Yellowstone County, 108 M 21, 27, 88 P 2d 6.

Affidavit Showing Occupancy

The county treasurer is without authority to issue a tax deed unless the applicant has shown by his affidavit that, where the property is unoccupied, he posted notice of application therefor in a conspicuous place upon the property as required by this section and section 2122, R. C. M. 1921 (since repealed), the affidavit constituting the basis upon which the treasurer acts. Gallash v. Willis, 90 M 148, 150, 300 P 569.

Without affidavit which shows whether the land is occupied or unoccupied the treasurer is wholly lacking in power and authority to issue the deed under section 84-4156. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 483; Ross v. First Trust & Savings Bank, 123 M 81, 208 P 2d 490; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 506.

Amount Due and Required To Be Paid

The purpose of notice required by this section to be given by the purchaser of real property on delinquent tax sale prior to application for tax deed is, inter alia, to advise the owner thereof of the amount he must pay in case he desires to redeem and therefore, the amount must be stated correctly; hence, where a county in its notice to an owner included in the total amount of taxes due those unlawfully levied for three years, the notice stated the amount due incorrectly and the court properly enjoined the county treasurer from issuing a tax deed to the purchaser. Hinz v. Musselshell County, 82 M 502, 513, 267 P 1113, explained in 98 M 501, 528, 41 P 2d 14. See also Tilden v. Chouteau County, 85 M 398, 279 P 231, Morse v. Kroger, 87 M 54, 63, 285 P 185, and Shubat v. Glacier County, 93 M 160, 18 P 2d 614.

Though chapter 132, Laws of 1937, cures defects or mistakes in a notice of application for tax deed so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of this section in that behalf. Sanborn v. Lewis and Clark County, 113 M 1, 19, 120 P 2d 567.

Curative Statutes No Help for Failure To Give Notice

Since the legislature could not, in violation of the due process of law clause of the constitution, have done away with the necessity of giving notice of an application for tax deed prescribed by this section, contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by chapters 94 and 105, Laws of 1939, held without merit. Kerr v. Small, 112 M 490, 493, 117 P 2d 271.

Defective Notice

A defective notice cannot be overcome by a validation statute. Fariss v. Anaconda Copper Min. Co., 31 F Supp 571, 579.

Defects Cured by Validating Statute

The appellant was in error where he contended that notice of application for tax deed was fatally defective in that it recited that the amount due for taxes, penalties, etc., was computed at a date seven days later than the date of the notice, since the defect was one of those cured by chapter 94, Laws of 1939, validating tax deeds issued prior thereto. Stoican v. Washburn, 112 M 603, 604, 120 P 2d 426.

Expiration of Period of Redemption

Section 84-4132 provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed." Section 84-4170 mentions "the date of the expiration of the period for redemption," but since under this section, the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in section 84-4170 is the time of the

application for tax deed. Hartman v. Nimmack, 116 M 392, 397, 154 P 2d 279.

Extension of Time for Redemption

Where notice of tax sale and of application for tax deed did not comply with statute, the time for redemption was extended indefinitely. Fariss v. Anaconda Copper Min. Co., 31 F Supp 571, 579.

Finding that Land "Unoccupied"

Evidence was sufficient to show that the land was unoccupied when the sheriff went there and found that the land had not been cultivated and no buildings of any kind were upon it. Shumaker v. Tracy, 126 M 477, 253 P 2d 1053, 1054.

Implied Power To Install Tract Index

In view of the provisions of this section and sections 84-4152 and 84-4156, and the powers conferred upon the county commissioners by sections 16-1001 to 16-1032, a board of county commissioners may authorize the installation and maintenance of a tract index in the office of the county clerk for information on lands sold for taxes and facilitating application for tax deeds, under their implied powers. Ransom v. Pingel, 104 M 119, 122, 65 P 2d 616.

Lands Not Subject to Tax Deed Proceedings

State lands are not the subject of tax deed proceedings, for the reason that the welfare of the entire state and its citizens is involved, and that valuable rights of the people might be lost thereby through malfeasance or nonfeasance of state officers or employees. This rule is based upon public policy. (See Section 89-2820.) State ex rel. Freebourn v. Yellowstone County, 108 M 21, 27, 88 P 2d 6.

Loss of Right To Redeem

Where right of redemption is not exercised before issuance of tax deed, the right of redemption is lost. Beckman Bros. v. Weir, 120 M 305, 184 P 2d 347, 348.

Methods of Obtaining Tax Deed

The holder of a tax sale certificate may obtain a deed through notice under this section or through action pursuant to section 84-4162. United States v. Christensen, 218 F Supp 722, 725.

Nature of Right of Redemption

The right of redemption granted by this section prior to the giving of notice is a vested property right of which the legal owner cannot be legally deprived except by the giving of notice. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 484.

Necessity of Notice

Until notice is given, the true owner is never foreclosed from challenging the tax proceedings for the lack of notice. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 484.

The validity of the tax deed depends upon compliance with the statute authorizing its issuance and a tax deed is void where the notice required by the statute is not given. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 483; Ross v. First Trust & Savings Bank, 123 M 81, 208 P 2d 490; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 506.

Preferential Right To Purchase

In addition to the right to redemption before the issuance of a tax deed the law gives the former owner a preferential right to purchase the property from the county after the issuance of a tax deed by complying with section 84-4190. Beckman Bros. v. Weir, 120 M 305, 184 P 2d 347, 348.

Prerequisites to Reception of Tax Deed in Evidence

A prerequisite to the reception in evidence of a tax deed is that it must be accompanied by the affidavit and notice of application therefor. Fariss v. Anaconda Copper Min. Co., 31 F Supp 571, 579.

Publication of Notice

Whether publication of notice of application for tax deed to real property is permissible under this section depends, not upon whether the owner of the property in question is known or unknown, or whether it is assessed to known or unknown owners, but upon whether the address of the owner is known, this being so whether the owner be known by name or unknown, the proceeding being in rem. Sutter v. Scudder, 110 M 390, 394, 103 P 2d 303.

This section requires publication of notice of application for tax deed only in case post-office address of record owner, mortgagee or assignee, be unknown. Milne v. Leiphart, 119 M 263, 174 P 2d 805, 808.

Publication of Notice—Affidavit

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made sixty or more days in advance of the tax deed as required by this section, such affidavit was defective and hence the tax deed is fatally defective. Bentley v. Rosebud County, 230 F 2d 1.

Publication of Notice—Proof of Publication

Assignees unable to produce proof of publication of notice of application for

tax deed, who had obtained assignment of tax certificate from county after creditors had executed on judgment against debtors from whom the county had taken the property, could not quiet title as against judgment creditors, who had become owners of certificate of sale. Musgrove v. Olds, 144 M 71, 394 P 2d 751, 753.

Purpose

The purpose of this section is to warn the owner of the property and others interested, of the impending issuance of the deed and the termination of the right of redemption, coincident therewith; the giving of notice of application is jurisdictional, and where the requirements were not complied with but, on the contrary were practically all disregarded, the deed issued was void. Sanborn v. Lewis and Clark County, 113 M 1, 17, 120 P 2d 567.

Service of Notice—Affidavit

Provisions similar in character to those contained in this section and section 84-4156 are a limitation upon the power of the treasurer to issue the tax deed, and render void any deed issued by him without requiring a compliance with them. The affidavit in particular is the basis upon which the treasurer is to act, and the conditions from which his power to issue the deed arises must appear by the affidavit. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 527, 134 P 302.

Service of Notice — Compliance with Statute

Where the address of the record owner was known, and the sheriff, as shown by his affidavit of service, sent by registered mail the notice of tax application to the record owner, service of such notice complied with the statute and no publication in a newspaper was required. Shumaker v. Tracy, 126 M 477, 253 P 2d 1053, 1054.

Service of Notice on Occupant

The fact that registered return receipts of notice of application for tax deed addressed to a corporation owner of the land held by the county under tax sale certificate were signed by the agent of the corporation, who was also an occupant, did not show service on him personally as occupant but merely showed knowledge in him aliunde the record, which, under the rule that the records alone can be considered and defects or omissions may not be corrected or supplied by anything dehors the record, was insufficient as a substitute for the statutory service upon him as an occupant required by this section. Jensen Livestock Co. v. Custer County, 113 M 285, 297, 124 P 2d 1013.

A party, challenging tax deed on the ground that as occupant of the property he was entitled to notice of expiration of redemption period, had the burden to establish that he was the person occupying the property and entitled to notice under this section and a person, who had discontinued paying rent after three-year lease, maintained no fences for more than ten years and at time county made application for tax deed land was uninclosed, where everyone, including plaintiff and neighbors, ran livestock, is no occupant entitled to notice. Van Voast v. Blaine County, 118 M 375, 167 P 2d 563, 564.

Whether a person is entitled to notice of application for tax deed as a "person occupying the land" does not depend upon right of occupancy, but whether the use made of the land constituted actual occupancy. Evidence held not to establish plaintiff's occupancy so as to require that notice be given of application for deed. Van Voast v. Blaine County, 118 M 395, 167 P 2d 572, 573.

Special Assessment by Irrigation District

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under this section. Vail v. Custer County, 132 M 205, 315 P 2d 993, 999.

Sufficiency of Notice

Under this section, it is not required that the name of the owner be given, and the fact that it is not addressed to anyone by name does not render it insufficient; the notice may include tracts of land belonging to more than one owner; and a published notice of application for tax deed to mining claims signed by the county clerk, showing date of application, describing the claims by name and survey number, was sufficient without naming the county where located, for anyone interested in ascertaining what property was involved. Sutter v. Scudder, 110 M 390, 396, 103 P 2d 303.

A notice of application for tax deed dated December 30, 1935, which recited that deed would be applied for on March 3, 1936, was sufficient under statute so far as record owner was concerned. Milne v. Leiphart, 119 M 263, 174 P 2d 805, 808.

Tax Deed Not Derived from Fee, but Antagonistic Thereto

A tax deed is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from its operation; it is not derived from the fee but is antagonistic to it, and there is no privity be-

tween the holder of the one and the holder of the other. Since the statute relating to tax sales involves confiscation of property in ex parte proceedings, due process necessitates a strict compliance with the provisions of this section. Hence it may not be contended that a tax deed is good as to a served owner, though not good as to an unserved occupant. Jensen Livestock Co. v. Custer County, 113 M 285, 295, 124 P 2d 1013.

Title Conveyed by Tax Deed

The quantum of title conveyed by a tax deed issued in 1936 pursuant to this section is governed by section 84-4170 which applies equally to tax deeds issued upon notice under this section and to tax deeds issued after suit under section 84-4162 et seq. Cascade County v. Weaver, 108 M 1, 5 et seq., 90 P 2d 164.

Waiver of Irregularity

Where a tax deed was invalid for failure to give the owner the statutory notice of application therefor, such owner could not be held to have waived his right to question the validity of the deed nor acquiesced in the taking of his property by being represented at the county's public auction sale by an agent who bid on it, because he had no rights to waive by bidding on the property. Kerr v. Small, 112 M 490, 494, 117 P 2d 271.

References

Horsky v. McKennan, 53 M 50, 58, 162 P 376; Arnold v. Custer County, 83 M 130, 139, 269 P 396; State ex rel. Bell v. McCullough, 85 M 435, 437, 279 P 246; State ex rel. City of Billings v. Osten, 91 M 76, 80, 5 P 2d 562; Miller v. Murphy, 119 M 393, 175 P 2d 182, 191; Cavitt v. Seirson, 119 M 437, 175 P 2d 767, 769; Perry v. Maves, 125 M 215, 233 P 2d 820, 821.

Collateral References

Taxation⇐750.
85 C.J.S. Taxation § 925.
51 Am. Jur. 942, Taxation, § 883.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale. 43 ALR 2d 967.

DECISIONS UNDER FORMER LAW

Necessity of Notice

The provision of this section (prior to 1917 amendment) requiring the purchaser of property sold for delinquent taxes to serve upon the owner or occupant thereof the written notice specified therein, thirty days before applying for the deed, is as binding upon a county as it is upon an individual. Harrington v. McLean, 70 M 51, 57, 223 P 912, distinguished in 119 M 437, 440, 175 P 2d 767. See also Hinz v. Musselshell County, 82 M 502, 513, 267 P 1113, Shubat v. Glacier County, 93 M 160, 18 P 2d 614, and Small v. Hull, 96 M 525, 531 et seq., 32 P 2d 4.

Posting Notice

Under section 3895, Political Code of Montana 1895, as amended by Laws 1905, ch. 79, where tax sale purchaser of mining property merely posted notice of sale on land, without serving notice upon owners residing in the county, his title was invalid because of a jurisdictional defect in the procedure required to obtain a tax title. Fariss v. Anaconda Copper Min. Co., 31 F Supp 571, 574.

Posting of notice for twenty-nine days did not comply with the provisions of section 3895, Political Code of Montana 1895, as amended by Laws 1905, ch. 79, requiring posting of notice thirty days before expiration of time for redemption. Fariss v. Anaconda Copper Min. Co., 31 F Supp 571, 575.

An affidavit, which did not show that notice was posted in a conspicuous place, did not show compliance with statute governing notice. Fariss v. Anaconda Copper Min. Co., 31 F Supp 571, 575.

84-4152. (2209.1) **Taking of tax deeds by counties, cities and towns—notice of application — order of governing body required.** Whenever a county, city or town has become or hereafter becomes the purchaser of property sold for delinquent taxes, and is the holder of the certificate of sale when the time for redemption expires, the board of county commissioners, city or town council or commission at any time thereafter deemed proper may order and direct the county clerk, city or town clerk, to apply to the county, city, or town treasurer, as the case may be, for the issuance to the county, city or town, of a tax deed for such property, and it shall then be the duty of the county clerk, city or town clerk, to give or post and cause to be published the proper notice of the application for such tax deed and to make the proper proof thereof, all in the manner required by section

84-4151. Provided, however, that the board of county commissioners, city or town council or commission, cannot be compelled to order and direct the county clerk, city or town clerk, to apply to the county, city or town treasurer, as the case may be, for the issuance of a tax deed within three years after the time for redemption has expired, unless the board of county commissioners, city or town council or commission deems it proper so to do.

History: En. Sec. 1, Ch. 92, L. 1927; amd. Sec. 1, Ch. 49, L. 1933.

Proceedings To Compel Application for Tax Deed

Where the holders of practically an entire issue of irrigation district bonds brought an action to compel county commissioners to apply for tax deeds to lands embraced in the district and bought by the county at delinquent tax sale, to enable the county to sell them and apply the proceeds to the payment of interest delinquent on the bonds, the county commissioners could be required to direct the county clerk to apply to the county treasurer for tax deeds as the provision of this section, prior to 1933 amendment, to the effect that the board of county commissioners may at any time, after time for redemption of property sold on tax sale bought in by the county, deemed proper, order the county clerk to apply for tax deeds thereto, is mandatory, and the board is without discretion in the matter. State ex rel. Malott v. Board of County Commrs., 86 M 595, 608, 285 P 932.

References

Arnold v. Custer County, 83 M 130, 140, 269 P 396; Ransom v. Pingel, 104 M 119, 122, 65 P 2d 616; State ex rel. Jensen Livestock Co. v. Hyslop, 111 M 122, 125, 107 P 2d 1088; Hartman v. Nimmack, 116 M 392, 396, 154 P 2d 279; Kelly v. Silver Bow County, 125 M 272, 233 P 2d 1035, 1036.

Collateral References

Taxation⇨748, 750.
85 C.J.S. Taxation §§ 923, 925.

84-4153. (2209.2) **Validation of tax deeds heretofore issued counties, cities and towns.** All tax deeds heretofore issued to counties, cities and towns, if in all other respects issued in conformity with law, shall be deemed and held to be legal, valid and subsisting deeds and sufficient in law to convey the legal title to the premises therein described to the county, city or town to which issued, and shall be received in evidence in all of the courts of this state, notwithstanding the fact that notice of application for any such deed was given or posted and caused to be published and proofs thereof made by the county, city or town treasurer, or by some person acting at his direction, or by some other person acting in behalf of the county, city or town, provided such notice was actually given or posted and caused to be published and proof thereof made by some officer of the county, city or town, or by some person acting in behalf of such county, city or town.

History: En. Sec. 2, Ch. 92, L. 1927.

Collateral References

Taxation⇨770.
85 C.J.S. Taxation § 950.

84-4154. (2210) **Redemption from tax sales.** In all cases where real estate has been sold for delinquent taxes the purchaser at such tax sale, or his assignee, may, subsequent thereto, pay the subsequent taxes assessed against said land, and upon the redemption of said land from such tax sale, the redemptioner shall, in addition to the amount for which the said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser at such tax sale, or his assignee, with interest thereon at the rate of eight per cent per annum from the date of the payment of such taxes, and in all notices of application for tax deed the applicant shall state, in ad-

dition to the amount paid at the tax sale, the amount of subsequent taxes paid by the applicant or his assignee upon such land, with interest thereon at the rate of eight per cent per annum from the date of such payment, and no redemption shall be made until the amount of such sale with interest, and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands.

History: En. Sec. 1, Ch. 98, L. 1913; re-en. Sec. 2210, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1939.

Notice of Amount Due

Under this section and section 84-4188, requiring a redemptioner to pay, in addition to the amount for which the property was sold, subsequent taxes paid by the purchaser, and section 84-4151, declaring that the notice which the purchaser must give when he applies for a tax deed must contain "the amount due," a notice of application for a deed to land sold for taxes assessed against it in 1921, including a statement of the amount due for taxes for the year 1920, did not state the correct amount due and was invalid and, therefore, the deed based thereon was likewise void. Tilden v. Chouteau County, 85 M 398, 401, 279 P 231.

Taxes Paid by Indians—Recovery by Federal Government

Where patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians, in paying a tax, had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. Glacier County v. United States, 99 F 2d 733, 735.

References

Thwing v. Weiser, 65 M 28, 31, 210 P 750; Sanderson v. Bateman, 78 M 235, 248, 253 P 1100; Shubat v. Glacier County, 93 M 160, 167, 18 P 2d 614; Sanborn v. Lewis and Clark County, 113 M 1, 20, 120 P 2d 567; United States v. Christensen, 218 F Supp 722, 725.

Collateral References

Taxation⇐709 (3).
85 C.J.S. Taxation § 875.
51 Am. Jur. 953, Taxation, § 1097 et seq.

84-4155. (2211) **Piecemeal redemption of land sold for taxes.** Whenever any person, firm, copartnership, corporation or association shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece or parcel of real estate, which said person, firm, copartnership, corporation or association shall own or hold a mortgage or other lien against or when such person, firm, copartnership, corporation or association shall be the owner of or have some interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the said real estate shall have been assessed and sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been separately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 1, Ch. 91, L. 1915; amd. Sec. 1, Ch. 73, L. 1919; re-en. Sec. 2211, R. C. M. 1921; amd. Sec. 1, Ch. 48, L. 1923; amd. Sec. 1, Ch. 17, L. 1941.

Constitutionality

This section, in requiring the county treasurer, upon the request of one seeking to redeem from tax sale a portion of a

tract of land on which he holds a mortgage and which portion had not been separately assessed, to compute and apportion the tax on the portion sought to be redeemed, is not unconstitutional as conferring the powers of an assessor upon the treasurer in a special and limited class of cases (section 26, article V of the constitution), nor as authorizing levy and collection of taxes in any other manner than by general law (section 11, article XII of the constitution). State ex rel. Federal Land Bank v. Hays, 86 M 58, 61 et seq., 282 P 32.

Computation of Tax Due

While the assessment roll, when completed and certified by the assessor as required by statute, may not be varied or contradicted by records made under the classification of lands act showing the full and true value of each forty-acre subdivision, such records are admissible in a mandamus proceedings to compel a county treasurer to compute the tax due on a portion of a tract of land assessed in bulk so as to enable a redemptioner to redeem such portion from tax sale, under this section, for the purpose of showing that the information was available to the treasurer from the records to enable him to make such computation. State ex rel. Federal Land Bank v. Hays, 86 M 58, 61 et seq., 282 P 32.

Redemption by Mortgagee

Where a tract of land, not assessed in forty-acre divisions, had been sold for taxes, and the mortgagee, desiring to redeem a portion of such land, demanded of the county treasurer that he compute and apportion the taxes delinquent upon each forty-acre tract, it was the legal duty of the treasurer to comply with the demand and the trial court erred in refusing to compel him by writ of mandate to perform that duty. State ex rel. Federal Land Bank v. Hays, 86 M 58, 61 et seq., 282 P 32.

Suit as for Debt Not Authorized

Failure of owner of realty to pay taxes levied thereon does not ordinarily subject him to a suit as for a "debt" due within the ordinary meaning of that word. Calkins v. Smith, 106 M 453, 458, 78 P 2d 74.

References

Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436; United States v. Christensen, 218 F Supp 722, 725.

Collateral References

Taxation⇐711.
85 C.J.S. Taxation § 878.
51 Am. Jur. 957, Taxation, § 1102.

84-4156. (2212) **Affidavit showing notice given—sum allowed therefor.** No deed of the property sold at a delinquent tax sale shall be issued by the county treasurer to the purchaser of the property until the proof of service of notice of application for tax deed has been filed with the county clerk and recorder as required by section 84-4151. Such purchaser is entitled to receive the sum of three dollars ($3.00) for the service of said notice and the making of said affidavit required by section 84-4151, which sum of three dollars ($3.00) must be paid by the redemptioner at the same time and in the same manner, as other costs, percentages, penalties and fees are paid.

History: En. Sec. 129, p. 114, L. 1891; re-en. Sec. 3896, Pol. C. 1895; re-en. Sec. 2652, Rev. C. 1907; re-en. Sec. 2212, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1947.

Deed Void—Improper Affidavit

A tax deed, void because of improper affidavit, can give defendant no rights under section 84-4159 (unconstitutional), limiting the time in which actions might be brought. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 483.

Deed Void—Insufficient Affidavit

Under this section the county treasurer has no jurisdiction to issue a tax deed until an affidavit showing that the notice of application for the deed as required by section 84-4151, including a statement whether or not the land is occupied has been given. If it is silent as to occupancy the deed is void. In determining the sufficiency of the tax title proceedings, the records alone can be considered, and defects or omissions may not be corrected or supplied by anything dehors the record. Jensen Livestock Co. v. Custer County, 113 M 285, 296, 124 P 2d 1013.

Where affidavit upon which the tax deed was issued was silent as to occupancy, it was insufficient to give the county treasurer jurisdiction to issue the tax deed. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 485; Ross v. First Trust & Savings Bank, 123 M 81, 208 P 2d 490; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 506.

Where affidavit recited that notice of

application was published for two consecutive weeks, but did not aver that the first publication was made sixty or more days in advance of the tax deed as required by section 84-4151, such affidavit was defective and hence the tax deed fatally defective. Bentley v. Rosebud County, 230 F 2d 1.

Deed Void without Affidavit

The validity of a tax deed depends upon compliance with the statute authorizing its issuance; hence, a deed, issued without the purchaser having filed an affidavit showing that notice of application had been given as required by this section, was unauthorized and therefore void. B. Kesselheim, Inc. v. Cocklin, 116 M 150, 151, 148 P 2d 945.

Defective Notice

Under the provisions of the prior act (R. C. M. 1935, section 2212), if the affidavit and notice of application for tax deed in the office of the county treasurer failed to show the required facts of notice, then it was defective and failed to confer power or authority upon the county treasurer to issue a tax deed. Perry v. Maves, 125 M 215, 233 P 2d 820.

Jurisdiction To Issue Tax Deed

The fact of service of notice or the treasurer's knowledge of service otherwise than through the affidavit is wholly insufficient to invest him with jurisdiction to issue the tax deed under section 2212, R. C. M. 1935. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 484; Ross v. First Trust & Savings Bank, 123 M 81, 208 P 2d 490; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 506.

Necessity for Affidavit

Without the filing of an affidavit which meets the statutory requirements, the treasurer is wholly lacking in power and authority to issue the deed under section 2212, R. C. M. 1935. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 483; Ross v. First Trust & Savings Bank, 123 M 81, 208 P 2d 490; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 506.

Posting of Notice

The county treasurer is without authority to issue a tax deed unless the applicant has shown by his affidavit that where the property is unoccupied, he posted notice of application therefore in a conspicuous place upon the property as required by this section and section 84-4151 (prior to 1917 amendment), the affidavit constituting the basis upon which the treasurer acts. Gallash v. Willis, 90 M 148, 150, 300 P 569.

Proof of Notice

A tax deed is not even prima facie evidence that the holder of the certificate had, thirty days before applying for such deed, given the written notice in the manner required by this section and section 84-4151, prior to the 1917 amendment of the latter, of his intention to make such application. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 527, 134 P 302; Horsky v. McKennan, 53 M 50, 58, 162 P 376.

The reception of tax deeds in evidence, without proof of the fact that the holder of the certificates of purchase gave the thirty-day notice of his intention to apply for the deeds under section 84-4151 (prior to 1917 amendment), was error. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 527, 134 P 302; Horsky v. McKennan, 53 M 50, 58, 162 P 376.

An affidavit filed by county clerk in county treasurer's office showing that he deposited in United States post office an envelope containing a copy of notice of application for tax deed, by registered mail, postage prepaid, addressed to record owner of the land, was sufficient proof to justify county treasurer in issuing tax deed. Milne v. Leiphart, 119 M 263, 174 P 2d 805, 808.

Requirements of Affidavit

The affidavit, required by this section to be filed by a purchaser of property at a delinquent tax sale who asks for a tax deed, must be in strict compliance with the statute, and must inter alia show whether the property was occupied or not, and if occupied, that the person upon whom the notice was served was at the time occupying it. Harrington v. McLean, 70 M 51, 58, 223 P 912.

The authority to execute the deed must be shown in and appear on the face of the affidavit. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 483.

References

Arnold v. Custer County, 83 M 130, 140, 269 P 396; State ex rel. Bell v. McCullough, 85 M 435, 437, 279 P 246; Small v. Hull, 96 M 525, 531, 32 P 2d 4; Sanborn v. Lewis and Clark County, 113 M 1, 17, 120 P 2d 567; Cavitt v. Seirson, 119 M 437, 175 P 2d 767, 768; Kelly v. Silver Bow County, 125 M 272, 233 P 2d 1035, 1036; Shumaker v. Tracy, 126 M 477, 253 P 2d 1053, 1054; Marek v. Smith, 132 M 73, 314 P 2d 864, 865.

Collateral References

Taxation⇐750.
85 C.J.S. Taxation § 925.

84-4157. (2213) **Form of tax deed—deed prima facie evidence of what.** The form of a tax deed of an estate in real property, executed by a county treasurer, may be made in substance as follows:

This indenture, made by and between ..... (insert name of treasurer), county treasurer of the county of ..... (insert name of county), in the state of Montana, the party of the first part, and ..... (insert name of grantee), the party of the second part, Witnesseth:

Whereas, there was assessed for the year ..... (insert year), in the name of ..... (insert name), that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of ..... (insert amount) dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to ..... (insert name of grantee), on the ..... (insert day) of ..... (insert month), A. D. ..... (insert year), for the sum of ..... (insert amount) dollars, and certificates of sale were duly issued and filed as required by law; and

Whereas, no redemption from said sale has been made, and the said grantee has given the necessary notice of application for tax deed as required by law;

Now, therefore, I, ... (insert name of treasurer), county treasurer of the county of ..... (insert name of county), in the state of Montana, for and in consideration of the sum of ..... (insert amount) dollars paid, do grant to ..... (insert name of grantee), all the property situated in ..... (insert name of county) county, state of Montana, described as follows: ..... (here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this ..... (insert day) day of ..... (insert month), A. D. ..... (insert year).

.....

County treasurer of ..... county,
state of Montana.

A tax deed executed in the form as provided in this section, when duly acknowledged and proved, is prima facie evidence that:

1. The property was assessed as required by law.
2. The property was equalized as required by law.
3. The taxes were levied in accordance with law.
4. The taxes were not paid.
5. That notice of tax sale was given and published, and property sold at the proper time and place as prescribed by law.
6. The property was not redeemed, and that the proper notice of application for deed has been served or posted as required by law.
7. The person who executed the deed was the proper officer.

8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

History: Ap. p. Sec. 1748, 5th Div. Comp. Stat. 1887; amd. Sec. 130, p. 115, L. 1891; re-en. Sec. 3897, Pol. C. 1895; re-en. Sec. 2653, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1919; re-en. Sec. 2213, R. C. M. 1921. Cal. Pol. C. Sec. 3786.

Notice of Application for Tax Deed

Under this section a tax deed is prima facie evidence that proper notice of application for the deed was served or posted as required by law. Richardson v. Lloyd, 90 M 127, 131, 300 P 254.

In action to quiet title based on a tax deed, where record established that a duly certified copy of tax deed was admitted in evidence, that it contained a recital that necessary notice of application for tax deed had been given, that such notice had been given, and that the deed was duly acknowledged and recorded, such a showing, aided by the statutory presumptions of regularity, entitled plaintiff to judgment, notwithstanding failure of record to show whether county clerk made and filed affidavit of proof of giving notice of application for tax deed. Cavitt v. Seirson, 119 M 437, 175 P 2d 767, 769.

Void Deed

Where a tax deed shows on its face that it is void because the county was a competitive bidder at the sale, a grantee of the county cannot rely upon the presumption that official duty had been regularly performed, or that the property was sold as prescribed by law. Rush v. Lewis and Clark County, 36 M 566, 570, 93 P 943, affirmed 37 M 240, 95 P 836.

References

Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 523, 134 P 302; Kelly v. Silver Bow County, 125 M 272, 233 P 2d 1035, 1036.

Collateral References

Taxation⇨754, 788, 789.
85 C.J.S. Taxation §§ 928, 957-960.

84-4158. (2214) **Procedure in actions to quiet title to tax deed property.** In any action now pending, or hereafter brought to set aside or annul any tax deed, or to quiet title, or to determine the rights of such purchaser, including the county, or his successors, to real property claimed to have been acquired by reason of tax proceedings or a tax sale, the purchaser or his successor upon filing an affidavit may obtain from the court an order directed to the person claiming to own the property, or to have any interest in or lien upon said property, or a right to redeem the same, or claiming rights hostile to the tax title (which said person is herein, for convenience, called the true owner), commanding him to deposit in court, to the use of the tax purchaser or his successors, the amount of all taxes, interest and penalties which would have accrued if said property had been regularly and legally assessed and taxed as the property of said true owner and sold for delinquent taxes and was about to be redeemed by him, and the amount of all sums reasonably paid thereafter by said purchaser or his successors after three (3) years from the date of said tax sale in preserving said property or in making improvements thereon while in possession thereof, as the total amount of said taxes, interest, penalties and improvements is alleged by the plaintiff and as shall appear in said order, or to show cause on a date to be fixed in said order, not exceeding thirty (30) days from the date thereof, why such payments should not be made. Said affidavit shall set forth the place of residence of said true owners and whether they are in the state of Montana, if known to the plaintiff, or that the same is not known to the plaintiff.

Said order shall be filed with the clerk and a copy served personally upon all persons shown in said affidavit to be residents of and in the state of Montana, and jurisdiction shall be acquired over all other persons by publishing the same once in a newspaper in the county, and by posting the

same in three (3) public places in the county at least ten (10) days before the day fixed for the hearing and by leaving a copy with the county treasurer.

Upon the hearing of the order to show cause the court shall have jurisdiction to determine said amount and to make an order that the same be paid into court within a given time, not exceeding thirty (30) days after the making of said order. If such amount, when so determined, shall not be paid within the time fixed by said court, then said true owner shall be deemed to have waived any defects in the tax proceedings and any right of redemption, and thereupon, irrespective of any irregularities, defects or omissions or total failure to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices, including notices of redemption, or concerning tax deeds, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid), the title of such true owner shall not be quiet as against said purchaser or his successors, and a decree shall be entered in said action quieting the title of said purchaser or his successor as against said true owner.

If such payment shall be made into court, and said true owner shall be successful in said action and said tax proceedings shall be held void, said sum shall be paid to the purchaser or his successors. If said true owner shall not be successful in said action and the title of said purchaser or his successors shall be sustained, said money shall be returned to said true owner.

In actions to quiet title, when brought by the purchaser or the county, or their successors, several tracts of land contiguous or noncontiguous, and whether owned by different defendants, may be set forth in one complaint, and all persons claiming any title to or interest in or lien upon any of said premises, or any part thereof, although their said claims are independent and not in common, and do not cover the same tracts, may be joined as defendants. The procedure in said action shall follow, as near as may be, the procedure specified in sections 93-6203 to 93-6211.

In the final judgment the court shall also determine the rights growing out of any additional taxes on said property accruing or being paid by either party during the pendency of said suit and, in said suit, the court shall have complete jurisdiction to fix the amount of taxes which should have been paid and to determine all questions necessary in granting full relief, including the power, in appropriate cases to order any assessor or other tax officer to make and certify to the court a corrected or new assessment or to do any other act or thing necessary to enable the court to do complete justice in the premises. Errors may be reviewed on appeal from the final judgment.

History: En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1927; amd. Sec. 1, Ch. 29, L. 1947. Cal. Pol. C. Sec. 3787.

Compiler's Note

Sections 93-6206 to 93-6208, contained in the reference to sections 93-6203 to 93-6211 in the fifth paragraph of this section, were repealed by Sec. 2, Ch. 189, Laws 1963.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Constitutionality

The amendment of this section by chapter 85, Laws of 1927, does not offend against the requirements of section 23, article V of the constitution, relative to the contents of the title of an act, in that the provision for a deposit of taxes, interest and penalties is germane to the matters expressed in the title, and therefore sufficient to meet the constitutional requirement. State ex rel. Souders v. District Court, 92 M 272, 12 P 2d 852.

In view of the fact that the statutory proceedings for a sale of property for delinquent taxes are primarily designed as a means for collecting the tax against it, this section, requiring a deposit of taxes, etc., preliminary to action to set aside a tax deed, is not invalid under section 13, article XV of the constitution, as destructive of vested rights, in that it imposes obligations with respect to a past transaction which were not required at the time the property was sold for taxes. State ex rel. Souders v. District Court, 92 M 272, 12 P 2d 852.

This section and chapter 162, Laws of 1929 (since repealed), in so far as they purport to authorize a county to relinquish to the purchaser of lands at tax sale the amount of delinquent taxes, interest and penalty, required by order of court to be deposited by the original owner as a condition precedent to his right to maintain an action to set aside the tax deed, if the deed be set aside, are in conflict with section 39, article V of the constitution, prohibiting the release by the state or a subdivision thereof of an obligation due it, and to that extent invalid. Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901.

Actions To Set Aside Tax Deeds

Where the sole aim of an action is to do away with a tax deed as a claim of title adverse to the plaintiff, it is an action "to set aside or annul" a tax deed so as to make the provision of this section applicable, even though it may be termed one to quiet title. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 529, 134 P 302.

Action To Enjoin Issuance of Tax Deed

This section, authorizing the district court to order one seeking to set aside a tax deed or the quieting of title to real property acquired by tax sale, to make a deposit of accrued taxes, interest and penalties as a condition precedent to his right to maintain the action, applies to a proceeding to enjoin issuance of a tax deed. State ex rel. Souders v. District Court, 92 M 272, 12 P 2d 852.

Affidavit Is Jurisdictional

Under this section authorizing the holder of the tax title, upon filing of an affidavit, to obtain an order commanding the true owner to deposit taxes, interest and penalties, the affidavit is jurisdictional and must set forth the matters required by the statute. Glacier County v. Frisbee, 117 M 578, 580, 164 P 2d 171.

Appeal Not Allowed from Order Relating to Deposit

Under this section, plaintiff, in an action to set aside a tax deed, is required to deposit in court the amounts therein provided for, before being permitted to maintain his action. If there be any question raised as to the amount so to be deposited, the court has jurisdiction to fix the amount after hearing on order to show cause. No appeal lies from such an order. The order is reviewable on appeal from the judgment in the main action to set aside the tax deed, and the owner (redemptioner) is not estopped from contesting the correctness of the order by making the deposit as fixed by the court, to enable him to maintain his action. Tilden v. Chouteau County, 85 M 398, 279 P 231.

Application of Statute

While chapter 85, Laws of 1927 (this section and section 84-4161), is entitled "An act for the validating of tax sales and deeds heretofore or hereafter made," etc., it merely prohibits an attack upon a tax deed for a defect in tax proceedings or tax sales after the expiration of one year subsequent to its issuance, and therefore has no effect upon a deed attacked in a suit instituted within the year. Glacier County v. Schlinski, 90 M 136, 300 P 270.

Cost Bill

An order, requiring plaintiff in an action to set aside a tax deed to deposit in court the moneys authorized by this section as a condition precedent to his right to maintain the action, is not the equivalent of a rendition of judgment and therefore the successful defendant was not required to serve his cost bill within five days after notice of the order. Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901.

Default in Making Deposit

Plaintiff in an action to set aside a tax deed may refuse to make the deposit authorized by this section where the order requiring it to be made embraces improper items, and raise the question on appeal from the judgment entered for default in making it. Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901.

Defense of Exemption from Tax Levies and Sale

In an action to quiet title brought by purchaser of Indian land acquired by the county under tax deed, where trust patent issued to half-blood Indian allottee had been changed at his request to fee simple patent, and defense was based on the ground that the lands were exempt from state tax levies and sale upon nonpayment thereof, and no question of redemption was raised by the pleadings, it was not necessary to pass upon the question of sufficiency of evidence to make a case under this section. Chatterton v. Lukin, 116 M 419, 424, 154 P 2d 798.

Deposit Not Required by Cities

The deposit required by this section is in the nature of security, and a city is exempt from the provisions thereof under section 93-8714, exempting municipalities from the provisions of any statute requiring parties in civil suits to post security, and therefore need not make such deposit as defendant in a quiet title action as a condition precedent to its right to appear and assert its lien for special improvement assessments payable after execution of tax deed. Cascade County v. Weaver, 108 M 1, 3, 90 P 2d 164.

Deposit of Taxes and Other Costs

A stipulation between the parties to an action to annul a tax deed to the effect that the party attacking its validity need not deposit in court, as a condition precedent to his right to maintain the action, the sums required by this section to be paid to the purchaser in case the deed be held invalid, is tantamount to a compliance with the requirement, the purchaser thereby waiving immediate deposit and the claimant agreeing to pay when called upon to do so if decree should go for him. Glacier County v. Schlinski, 90 M 136, 300 P 270.

Where a county, defendant in an action to set aside a tax deed, made no demand, under this section, that plaintiff deposit the taxes, interest, etc., due it, in advance of trial, the court erred in including them in an order made pursuant to a demand by its codefendant, purchaser from the county. Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901.

All a purchaser of land from the county at tax sale, on attack of the deed by the original owner, may, under this section, demand as a deposit from such owner prior to trial is that which he has paid to the county, with interest, and which he has reasonably expended in preserving and improving the property, to be paid to the purchaser in case the deed be set aside, the plaintiff, in that event, being then required to pay to the county the balance of the taxes, penalty and interest due over and above what had been paid by the purchaser. Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901. See also Small v. Hull, 96 M 525, 529, 32 P 2d 4.

A purchaser of real property, obtained by a county at tax sale, may, in an action by the former owner to set aside the deed, require the latter to deposit, under this section, the amount of taxes and installments of the purchase price paid by him after the purchase, and recover the same in the event plaintiff has judgment. Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901.

Failure of a county, made codefendant in an action to set aside a tax deed, to appear and demand that plaintiff as a condition to his right to maintain the action make a deposit of taxes, interest and penalty due, did not result in a remission thereof, contrary to section 39, article V of the constitution, the trial court, on retrial, having power to protect the rights of the county in that behalf. Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901.

Where order was entered in conformity with opinion of supreme court, requiring plaintiff to pay to defendant certain sum and reciting that if plaintiff refused to deposit sum by specified date, judgment would be entered for defendant quieting title in him and motion of plaintiff to vacate such order was not brought on for hearing for more than twelve years after it was made, laches of plaintiff barred relief. State ex rel, Johnstone v. District Court, 132 M 377, 319 P 2d 957, 959.

Findings Showing Allowances of Costs

Where, in an action to quiet title to property acquired by tax deed brought by its former owner, the court required deposit made up of various items claimed by defendant without showing how such amount was arrived at, including the entire amount of taxes levied on the land after purchase from the county instead of only a one-fifth interest therein paid under contract of sale before commencement of the action, and there was no request for specific findings showing allowances and deductions nor exceptions taken to its findings, the supreme court on appeal will not disturb them. (See Sections 93-5305 and 93-5306.) Sanborn v. Lewis and Clark County, 113 M 1, 19, 120 P 2d 567.

Lands Allotted to Indian under Trust Patent

In an action to quiet title to lands allotted to an Indian but sold for delinquent taxes, where purchaser secured an order to show cause why owner should not deposit in court the taxes paid with pen-

alty and interest, and on return day owner attacked both tax and tax proceedings, but order was issued without hearing, appeal was inadequate to review action of the court in making order requiring deposit without hearing the owner. State ex rel. Jensen v. District Court, 103 M 461, 464, 64 P 2d 835.

Misnomers or Other Mistakes

When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake being in the nature of an informality or irregularity only. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 523, 134 P 302.

The fact that a tax deed to real property erroneously recited that the property had been assessed to the wife of the owner whereas it had heen assessed to her deceased husband, was no more than a clerical error insufficient to affect the validity of the deed. Sutter v. Scudder, 110 M 390, 397, 103 P 2d 303.

Order Requiring Deposit

This section, requiring the court upon hearing to fix the amount of taxes, interest, penalties, and money spent in improving the property and requiring a deposit of such amount, does not authorize the court to postpone such determination and merely requires a bond be deposited to cover such amount. The court's duty is to determine the amount necessary for plaintiff to deposit in court and then fix the time for its payment. State ex rel. Johnson v. District Court, 130 M 103, 295 P 2d 1042, 1044.

Owner May Show Cause by Affidavit or Oral Testimony

Where required to show cause why he should not be required to pay all taxes, interest and penalties, owner, under this section, may show cause either by affidavit or by oral testimony. State ex rel. Jensen v. District Court, 103 M 461, 467, 64 P 2d 835.

Tender of Taxes and Costs Does Not Waive Right To Attack Deed

Defendant, in an action by a county to quiet title to real property acquired by tax deed, did not waive his right to attack the deed on the ground that the notice of application for deed did not correctly set out the amount due to bring about redemption, by his tender of a larger amount than that due, made pursuant to an order of court under chapter 85, Laws of 1927 (this section and section 84-4161), requiring a deposit as a condition precedent to his right to be heard. Glacier County v. Halvorson Mercantile Co., 93 M 520, 524, 19 P 2d 648.

Void Tax Deed

As this section presupposes the issuance of a valid instrument, a tax deed which is void on its face, and therefore not a deed but a nullity, does not come within the purview of its provisions. Horsky v. McKennan, 53 M 50, 64, 162 P 376; Lindeman v. Pinson, 54 M 466, 471, 171 P 271.

References

State ex rel. Malott v. Board of County Commrs. of Cascade County, 89 M 37, 296 P 1; Smith v. Whitney, 105 M 523, 526, 74 P 2d 450; State ex rel. Lukin v. District Court, 113 M 621, 622, 139 P 2d 488; Marek v. Smith, 132 M 73, 314 P 2d 864, 866; United States v. Christensen, 218 F Supp 722, 725.

Collateral References

Taxation⇨790-793.
85 C.J.S. Taxation §§ 966-968.
51 Am. Jur. 947, Taxation, § 1089 et seq.

DECISIONS UNDER FORMER LAW

Conclusive Evidence of All Tax Proceedings

The clause of this section, as amended by Laws of 1927, making a tax deed conclusive evidence of all proceedings leading up to its execution, refers to acts and proceedings required at the hands of the officers charged with duties in relation to assessment and taxation, and not to something necessary to be done by the applicant for the deed. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 527, 134 P 302.

Although chapter 85, Laws of 1927 provided that a duly executed tax deed is conclusive evidence of all tax proceedings up to the execution of the deed, it did not prevent owner in an action to quiet title from showing that notice of the application for tax deed was not served upon him as required by section 84-4151, such requirement being jurisdictional. Small v. Hull, 96 M 525, 529, 32 P 2d 4.

Statute of Limitations

Section 2214, R. C. M. 1921, is a statute of limitations, and must be pleaded in the answer by one seeking to take advantage of it. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 528, 134 P 302.

Under the rule that the legislature may amend a statute of limitations by shortening the time within which an action may be brought without impairing vested

rights, if the statute as amended still offers a reasonable time within which to act, this section, fixing the time within which an action to set aside a tax deed may be brought at one year, instead of two as theretofore, after the issuance of the deed, or the passage of the act with relation to deeds theretofore issued, is not unconstitutional as impairing such rights, the time thus given being reasonable. Couch v. Chase, 91 M 234, 236 et seq., 6 P 2d 867.

The provision of section 2214, R. C. M. 1921, that an owner of realty sold for delinquent taxes may not maintain an action to set aside a tax deed thereto as irregular or void unless commenced within one year from date of its issuance, amounts to a taking of his property, without due process of law, where the affidavit required by section 84-4156 showed upon its face that notice of application for the deed had never been served upon the owner, though the deed recited that this had been done. Small v. Hull, 96 M 525, 529, 32 P 2d 4.

Where tax deed proceedings were void for jurisdictional defects, section 2214, R. C. M. 1921, requiring an action to set aside or annul a tax deed to be brought within two years from date of issuance of deed, did not apply. Miller v. Murphy, 119 M 393, 175 P 2d 182, 191.

84-4159. Unconstitutional.

Unconstitutional

This section (Laws 1943, Ch. 100, Sec. 1), prescribing a limitation on time within which to bring action to set aside tax deed, was held unconstitutional as a special law in Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 487, explained in 138 M 467, 470, 358 P 2d 399.

This law is a special law in violation of section 26, article V of the constitution applying to certain persons and individuals and leaving all other persons in the same circumstances to the provisions of the general statute on adverse possession. Lowery v. Garfield County, 122 M 571, 208 P 2d 478, 487, explained in 138 M 467, 470, 358 P 2d 399; Ross v. First Trust & Savings Bank, 123 M 81, 208 P 2d 490; Mitchell v. Garfield County, 123 M 115, 208 P 2d 497, 506.

84-4160. (2214.1) **Validation of delinquent tax sales and sales of real property by counties.** All sales heretofore made, or attempted to be made, by counties of real property purchased for taxes, and the deeds to purchasers and the contracts for sale of real property to purchasers, whether irregular or void for any failure to comply with any of the provisions of any statute or of any act of the legislature relating to the time or manner or form of publication of the notice of sale or to the time or place or manner of posting notices of sale of real property, are hereby confirmed; and said deeds and contracts, and any deed or contract executed under this section, shall vest in the purchaser, as of the date of said deed or contract, all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county, in and to said real estate.

History: En. Sec. 1, Ch. 140, L. 1931.

References

Howard v. Newlon, 112 M 189, 190, 114 P 2d 272.

Collateral References

Taxation⇐770.
85 C.J.S. Taxation § 950.
51 Am. Jur. 935, Taxation, §§ 1075-1077.

84-4160.1. (2214.2) **Validation of tax deeds.** No tax deed heretofore issued in this state shall be held invalid by reason of any defect in the form, substance or amounts stated to be due in the notice of application for tax deed, or for failure to give the full sixty (60) day notice required by section 84-4151, provided, however, at least thirty (30) days notice of the time when the deed was applied for was given. All tax deeds heretofore issued are legalized and declared to be valid and legal regardless of any error, defect, omission, irregularity, or failure to correctly state the amount due in the notice of application for tax deed. This act shall not apply to any case

where, prior to its passage and approval, the owner of land or the party entitled to redeem shall pay or tender to the owner or holder of the tax deed or the county treasurer of the county wherein the land described in said tax deed is situated, the amount actually due for taxes, penalty and interest at the time when said money is so tendered. In all cases where notice of the amount of taxes then due has been given to the parties interested and has been published in accordance with the laws then in effect and the taxes remain unpaid, tax deed may be issued under such proceedings, already so initiated and when so issued and delivered, such deeds shall be within the intent and purview of this act.

History: En. Sec. 1, Ch. 79, L. 1933; amd. Sec. 1, Ch. 132, L. 1937; amd. Sec. 1, Ch. 94, L. 1939; amd. Sec. 1, Ch. 105, L. 1939; amd. Sec. 1, Ch. 171, L. 1947.

DECISIONS UNDER FORMER LAW

Constitutionality

Curative or validating statutes, such as chapter 79, Laws of 1933, validating tax deeds theretofore issued notwithstanding error in stating the amount due for taxes, interest and penalty in the notice of application for tax deed, do not violate section 27, article III of the state constitution relative to due process of law. Howard v. Newlon, 112 M 189, 191, 114 P 2d 272.

Curative Statutes Do Not Remove Necessity To Give Notice of Application for Tax Deed

Since the legislature could not, in violation of the due process of law clause of the constitution, have done away with the necessity of giving notice of an application for tax deed prescribed by section 84-4151, contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by this section as amended by chapter 105 and chapter 94, Laws of 1939, was without merit. Kerr v. Small, 112 M 490, 493, 117 P 2d 271.

Defects Cured by Statute

Though chapter 132, Laws of 1937, cures defects or mistakes in a notice of application for tax deed given pursuant to section 84-4151 so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of that section in that behalf. Sanborn v. Lewis and Clark County, 113 M 1, 19, 120 P 2d 567.

Irregularities Cured by Validating Statute

Irregularities in sale of delinquent real property not affecting jurisdiction were cured by section 84-4124 validating certificates of sale, and chapter 79, Laws of 1933, validating tax deeds therefore issued. Martin v. Glacier County, 102 M 213, 220, 56 P 2d 742, distinguished in 31 F Supp 571, 577, 578.

Mistake as to Amount Payable

In an action to quiet title to real property acquired by tax deed in which defendant attacked the deed on the ground that the county's notice of application for tax deed naming $1036.25 as the amount payable for redemption purposes was erroneous, the error apparently involving $3, the error was cured under this section, thus rendering the deed valid, under the holding in Martin v. Glacier County, 102 M 213, 56 P 2d 742. Howard v. Newlon, 112 M 189, 191, 114 P 2d 272. See also Stoican v. Washburn, 112 M 603, 604, 120 P 2d 426.

84-4161. (2215) **Title conveyed by deed—procedure to cure defects.** (1) All deeds heretofore or hereafter executed more than three years after any tax sale shall be deemed to convey to the grantee the absolute title to the lands described therein as of the date of the expiration of three years following the date of sale, including all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county, in and to said real estate, and including the right of, if said tax deed or tax sale, or any of the tax proceedings upon which said deed may be based, shall be attacked and held irregular or void, to recover the unpaid taxes, interest and penalties which would accrue if said tax proceedings had been regular and

it was desired to redeem said property, free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale, and except when the land is owned by the United States or the state, in which case it is prima facie evidence of the right of possession accruing as of the date of the expiration of such period for redemption.

(2) If any tax deed or deed purporting to be such has been or shall be issued more than three years and thirty days after any tax sale or attempted tax sale, the grantee may publish in any newspaper in the county published at the county seat or if none, in any other newspaper once a week for two weeks a notice entitled "a notice of claim of a tax title" which shall set forth a description of any property claimed to have been acquired by a tax deed, an estimate of the amount due thereon for taxes, interest and penalties, and a statement that for further particulars reference is made to the records in the office of the county treasurer; also the name of the person claiming to have obtained a tax deed to said property and the name of the person in whose name said property was assessed or taxed and a statement that demand is made that such person shall, within (30) thirty days after the first publication of said notice, pay to said claimant or to the county treasurer to his use the amount of the taxes, interest and penalties as the same may appear in the records of the county treasurer or bring a suit to quiet his title or to set aside said tax deed or deeds. Any mistake in the amount or in any name specified in said notice shall not invalidate the same.

If, within said period of (30) days, said taxes, interest, and penalties shall not have been paid or said suit brought, all defects in the tax proceedings and any right of redemption shall be deemed waived and thereupon, irrespective of any irregularities, defects, or omissions, or total failures to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices including notices of redemption, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid) the title to said property described in said notice and in the tax deed shall be valid and binding.

History: En. Sec. 132, p. 115, L. 1891; re-en. Sec. 3899, Pol. C. 1895; re-en. Sec. 2655, Rev. C. 1907; re-en. Sec. 2215, R. C. M. 1921; amd. Sec. 2, Ch. 85, L. 1927. Cal. Pol. C. Sec. 3788.

Attack on Tax Deed Not Collateral Attack

Though the rule against collateral attack is the same in an action where the validity of a tax deed is called in question as in the case of attack on a judgment, where the purpose of a proceeding is to secure an interpretation to be given a tax deed because of apparently conflicting provisions of statutes as to the extent of title conveyed, there is no infraction of the rule. Cascade County v. Weaver, 108 M 1, 10, 90 P 2d 164.

Easement Not Extinguished by Tax Deed

Since the negative easement created in favor of a townsite company by the restriction inserted in its deeds to lots sold by it prohibiting the sale of liquor upon the premises was appurtenant to its other lots and was taxable as such, a tax deed to the servient tenement—a lot sold under the restriction—though creating a new title free from all encumbrances, did not extinguish the easement but remained subject thereto. Northwestern Improvement Co. v. Lowry, 104 M 289, 303, 66 P 2d 792.

Encumbrances

The provision of this section is imperative that the tax deed in question extinguishes the lien of special improvement assessments, as it does all contract liens,

and even prior tax liens. State ex rel. City of Great Falls v. Jeffries, 83 M 111, 121, 270 P 638, explained in 108 M 1, 6, 90 P 2d 164.

Section 89-1706, making bonds issued by an irrigation district a lien upon all lands in the district, thereby created a lien which constitutes an encumbrance against them, within the meaning of the term, "encumbrance" as used in this section, providing that a tax deed conveys to the grantee absolute title "free of all encumbrances." State ex rel. Malott v. Board of County Commrs. of Cascade County, 89 M 37, 75 et seq., 296 P 1. See also Stanley v. Jeffries, 86 M 114, 124, 284 P 134; Richardson v. Lloyd, 90 M 127, 132, 300 P 254.

A tax deed conveys absolute title free from all encumbrances and free of any and all claims of defendants to quiet title actions. United States v. Christensen, 218 F Supp 722, 725.

Lien of Special or Local Improvement

On the theory that this section, providing in effect that a tax deed cuts off all prior tax liens, was impliedly amended by Sec. 9, Ch. 100, Laws 1929 (84-4170), declaring that such a deed shall be subject to the lien of any special or local improvements payable after the execution of the deed, the operation of the amendment is prospective, not retroactive. State ex rel. City of Billings v. Osten, 91 M 76, 78 et seq., 5 P 2d 562, distinguished in 109 M 578, 592, 98 P 2d 872.

Since section 84-4170 applies equally to tax deeds issued after notice under sections 84-4151 et seq. and those issued after court action under sections 84-4162 et seq., this section was impliedly amended by section 84-4170 so that any tax deed issued after its enactment is subject to the lien of special improvement assessments levied thereafter. Cascade County v. Weaver, 108 M 1, 4, 90 P 2d 164.

Restrictions in Deeds

Restrictions in deeds as to uses to which the property conveyed may not be put with the provision that if the grantee or his heirs or assigns shall at any time breach the condition, the conveyance shall be void and the premises shall at once revert to the grantor, are valid. Injunction lies to restrain a violation of a covenant against any such use. Northwestern Improvement Co. v. Lowry, 104 M 289, 303, 66 P 2d 792.

Title

By the enactment of this section, providing that a tax deed conveys absolute title "free from all encumbrances except the lien for taxes which may have attached subsequent to the sale," a new title in the nature of an independent grant from the sovereignty is created, extinguishing all former titles and liens not expressly exempted from its operation. State ex rel. City of Great Falls v. Jeffries, 83 M 111, 116 et seq., 270 P 638, explained in 108 M 1, 6, 90 P 2d 164.

A tax deed is not derivative but creates a new title in the nature of an independent grant from the sovereignty and strikes down the former owner's fee title and extinguishes all encumbrances including oil leases and assignments of royalty interests. Rist v. Toole County, 117 M 426, 442, 159 P 2d 340, 162 ALR 406.

Titles and Liens Extinguished

Under this section, declaring that a tax deed to real property conveys absolute title "free from all encumbrances," such a deed is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from the operation of the section. Northwestern Improvement Co. v. Lowry, 104 M 289, 300, 66 P 2d 792.

References

Tilden v. Chouteau County, 85 M 398, 402, 279 P 231; State ex rel. Souders v. District Court, 92 M 272, 12 P 2d 852; Shull v. Lewis and Clark County, 93 M 408, 415, 19 P 2d 901; State ex rel. Malott v. Cascade County, 94 M 394, 409, 22 P 2d 811; Small v. Hull, 96 M 525, 529, 32 P 2d 4; Blackford v. Judith Basin County, 109 M 578, 583, 98 P 2d 872; State ex rel. Jensen Livestock Co. v. Hyslop, 111 M 122, 132, 107 P 2d 1088; Hartman v. Nimmack, 116 M 392, 395, 154 P 2d 279.

Collateral References

Taxation⇐778, 784, 785, 829.
85 C.J.S. Taxation §§ 905, 906, 1004.

Law Review

Tax Titles in Montana, 20 Mont. L. Rev. 73 (Fall 1958).

84-4162. (2215.1) **Action to procure tax deed—taxes to be paid.** The purchaser of property sold for delinquent taxes or his assigns desiring a tax deed thereto may at his option, in addition to all other methods now provided by law, bring and maintain an action in the district court of the county in which such real property is situated, which said action shall be brought and except as herein provided shall be prosecuted as in other civil

actions. Before bringing the action, the plaintiff, unless it be the county, shall pay all delinquent taxes assessed subsequent to the date he procured the certificate of sale which may then be due to the county.

History: En. Sec. 1, Ch. 176, L. 1933.

Cross-Reference

Application of Montana Rules of Civil Procedure to action for tax deed, see M. R. Civ. P., Rule 81(a), Table A.

Methods of Obtaining Tax Deed

The holder of a tax sale certificate may obtain a deed through notice under section 84-4151 or through action pursuant to this section. United States v. Christensen, 218 F Supp 722, 725.

References

Cascade County v. Weaver, 108 M 1, 5, 90 P 2d 164; State ex rel. Freebourn v. Yellowstone County, 108 M 21, 27, 88 P 2d 6; Blackford v. Judith Basin County, 109 M 578, 581, 98 P 2d 872; Sanborn v. Lewis and Clark County, 113 M 1, 5, 120 P 2d 567.

Collateral References

Taxation⇐753.
85 C.J.S. Taxation § 927.

84-4163. (2215.2) **Commencement of action—parties—contiguous and noncontiguous tracts.** The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiff and all persons having an interest in said property, or in any part thereof, either as owner, encumbrancer, or otherwise, whose interest shall appear of record in the office of the county clerk and recorder of the county in which the action is instituted, together with the county treasurer of said county, shall be named as defendants; if the county is the applicant, the action shall be brought in the name of the county clerk and recorder of said county; the complaint shall, among other things, set forth the description of the real property involved, the year in which the delinquent taxes were assessed, the amount for which the property was sold, the amount of taxes subsequently paid, the date of the sale of said property, the person to whom sold, the nature of the interest in each separate part of said land held by the respective defendants, or any of them, and the amount of money necessary to redeem the said lands from said sales. Several tracts of land, contiguous or noncontiguous, and whether owned by different defendants and whether sold at the same time, or at different times, may be set forth in one complaint and all persons claiming any title to, or interest in, or lien upon, any of said premises, or any part thereof, although their said claims are independent and not in common and do not cover the same tracts, may be joined as defendants. The rule of procedure outlined by this section shall apply to all actions brought to procure a tax deed hereunder and that may now be pending as well as all actions hereafter commenced under the provisions of this section.

History: En. Sec. 2, Ch. 176, L. 1933; amd. Sec. 1, Ch. 100, L. 1937.

84-4164. (2215.3) **Lis pendens.** Upon the filing of the complaint, a notice of the pendency of said action shall be recorded in the office of the county clerk and recorder of the county in which the said action is pending, and the lis pendens so recorded shall be filed with the clerk of the court and shall become a part of the judgment roll of said action.

History: En. Sec. 3, Ch. 176, L. 1933.

Collateral References

Lis Pendens⇐3 (1).
54 C.J.S. Lis Pendens § 9.

84-4165. (2215.4) **Summons — form — service.** Upon the filing of the complaint, a summons must be issued under the seal of the said court in manner, form and in substance as in civil actions, with the additional statement: "This action is brought for the purpose of procuring a tax deed from the county treasurer of ..... county (name of county), Montana, for the lands and premises described as: (description of the land)." Service of said summons shall be made as in civil actions.

History: En. Sec. 4, Ch. 176, L. 1933.

84-4166. (2215.5) **Defense to action—redemption of parcels.** Any defendant may appear in said action within the time provided by law for appearances in civil actions and may set up any defense to the said action he may have, and may therein question the legality, validity or the sufficiency of any act had in connection with the assessment or sale of said land; any defendant to said action may make redemption of said lands from said tax sale by paying the total amount of delinquent taxes and penalties, with interest thereon at eight per centum (8%) per annum from date of payment, which plaintiff shall have paid, together with costs of the action, and upon such payment a certificate of redemption therefrom shall be issued by the county treasurer of said county to the defendant so paying, and thereupon the said action shall be dismissed; whenever a defendant shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece, or parcel of real estate, which said person, firm, copartnership, corporation or association shall own or hold a mortgage or other lien against or have any interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the said real estate shall have been assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been separately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 5, Ch. 176, L. 1933.

References

Blackford v. Judith Basin County, 109 M 578, 583, 98 P 2d 872.

84-4167. (2215.6) **Judgment by default not authorized — costs.** No judgment in any such action shall be given by default but the court must require proof of the facts alleged in the complaint and other pleadings in said action. The court shall allow the successful party his costs to be fixed by the court including a reasonable attorney's fee in all cases where the county is not the applicant.

History: En. Sec. 6, Ch. 176, L. 1933.

84-4168. (2215.7) **Judgment—order to issue tax deed to plaintiff—effect of judgment.** The court by its judgment shall ascertain and determine by proper findings that the land was duly assessed, the year for which it

was assessed, the amount of the assessment thereof, that said land was sold for the delinquent taxes, that due notice of the sale of the land was given as provided by law, the date of the sale thereof, the person to whom sold, the amount for which it was sold, the fact of the assignment of the certificate of sale, if assigned, that the said land nor any part thereof has not been redeemed from said sale, if such be the case, and shall order and direct the county treasurer of said county to issue a deed of conveyance to the plaintiff for said land, that the said judgment so entered shall be binding and conclusive upon the defendants therein named, and from and after the entry of the said judgment all defendants to said action shall be forever barred and enjoined from claiming or asserting any claim of any kind or nature whatsoever existing at the time of the entry of said judgment to the lands and premises described in said action or to any part or portion thereof.

History: En. Sec. 7, Ch. 176, L. 1933.

Collateral Attack

Decree in favor of plaintiff, son of deceased, in action to procure tax deed could not be collaterally attacked in condemnation proceedings on the ground of defective service where it was expressly found that defendant son, and the administrator of the estate of the deceased, were the same person and that all defendants had been duly and legally served and there was no suggestion that creditors of the deceased or estate yet remained to be paid, or that final settlement of the estate would be dependent upon this asset. United States v. Hoerner, 157 F Supp 563, 564, 566.

References

Cascade County v. Weaver, 108 M 1, 9, 90 P 2d 164; Blackford v. Judith Basin County, 109 M 578, 583, 98 P 2d 872.

84-4169. (2215.8) **Form of tax deed issued on filing copy of decree with treasurer.** Upon filing with the county treasurer a certified copy of the decree, he must issue a tax deed for the real estate described in the judgment, which deed in substance shall be as follows: "This indenture, made by and between ..... (insert name of treasurer) ....., county treasurer of the county ..... (insert name of county) ....., in the state of Montana, the party of the first part, and ..... (insert name of grantee) ....., the party of the second part, witnesseth:

Whereas, there was assessed for the year ..... (insert year) ....., in the name of ..... (insert name) ....., that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of ..... (insert amount) ..... dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to ..... (insert name of grantee), ... on the ..... (insert day) ..... of ..... (insert month) ..... A. D., ... (insert year), ... for the sum of ..... (insert amount) ..... dollars, and certificates of sale were duly issued and filed as required by law; and

Whereas, by virtue of a judgment and decree entered by the District Court of the ..... Judicial District of the state of Montana in and for the county of ..... (insert name of county) ..... in an action wherein ..... was plaintiff and ..... defendant, a certified copy thereof being filed in my office, I, the said county treasurer aforesaid, am ordered and directed to issue this deed of conveyance for said lands.

Now, therefore, I, ... (insert name of treasurer), ... county treasurer of the county of ..... (insert name of county), ... in the state of Montana, for and in consideration of the sum of (insert amount) ..... dollars paid, do grant to ..... (insert name of grantee), ... all the property situated in ..... (insert name of county) ..... county, state of Montana, described as follows: ..... (here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this ..... (insert day) ..... of ..... (insert month), A. D., ... (insert year).

.....

County treasurer of .....

County, state of Montana."

History: En. Sec. 8, Ch. 176, L. 1933.

Collateral References

Taxation⇐754 et seq.

85 C.J.S. Taxation § 928.

84-4170. (2215.9) **Effect of deed.** The deed hereafter issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and the lien of any special, local improvement, irrigation and drainage assessments levied against the property payable after the execution of said deed, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession accrued as of the date of expiration of such period for redemption.

History: En. Sec. 9, Ch. 176, L. 1933; amd. Sec. 1, Ch. 63, L. 1937.

Lien of Taxes—Priority

Taxes assessed against personal property for general purposes and which became a lien upon lands of owner were superior to assessments, made prior to 1937 amendment, to pay interest on bonds, or for other purposes in connection with the irrigation district. United States v. Markey, 87 F Supp 102, 104, modified 177 F 2d 186.

New Title in Nature of Independent Grant

Where landowner commenced suit to enjoin an irrigation district from assessing the land for interest on bonds of the district, the bonds constituted an encumbrance upon the land within the district which was extinguished by the tax deed taken by the county, the deed creating a new title extinguishing all former titles and liens not expressly exempted from its operation. Rosebud Land & Improvement Co. v. Carterville Irr. Dist., 102 M 465, 468, 58 P 2d 765, explained in 108 M 1, 8, 90 P 2d 164.

Quantum of Title Conveyed by Tax Deed

The quantum of title conveyed by a tax deed issued in 1936 pursuant to notice under sections 84-4151 et seq., is controlled by this section, impliedly amending section 84-4161 confining the exception to taxes as distinguished from special improvement assessments; this holding is expressly limited to special assessments made after enactment of this section, as against the suggestion that it is retroactive and offends against section 13, article XV of the constitution. Cascade County v. Weaver, 108 M 1, 4, 90 P 2d 164.

Tax Deed Extinguishes Special Improvement Assessments Payable before Its Execution

A general tax lien and a special improvement assessment lien are not of equal rank. Support of government is higher obligation than cost of local improvement. Where a special assessment for city improvement became delinquent on November 30, 1940, and was certified by the city to the county clerk on December 7, 1940, and by the county treasurer entered upon

the tax rolls as a lien against the property, a county tax deed issued on December 23, 1940, extinguished the lien for the 1940 installment of the city special improvement assessment, because, under this section, such assessment installment was payable before execution of the tax deed. Hartman v. Nimmack, 116 M 392, 395, 154 P 2d 279, explained in 218 F Supp 722, 727.

Time of Application for Tax Deed

Section 84-4132 provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed." This section mentions "the date of the expiration of the period for redemption," but since, under section 84-4151, the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in this section is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 397, 154 P 2d 279.

Void Assessment

Where county assessed tax on minerals and mineral rights under the land but did not assess a tax on the party's right of entry for mining purposes, a tax deed based on such proceeding was void since under section 3, article XII of the state constitution, minerals or mineral rights cannot be taxed. Lehfeldt v. Adams, 130 M 395, 303 P 2d 934.

Waiver of Priority of General Tax Lien

While the lien of general taxes is superior to that of special assessments, the legislature has power to waive the priority of such lien and postpone it to that of special assessments. Cascade County v. Weaver, 108 M 1, 10, 90 P 2d 164.

References

Blackford v. Judith Basin County, 109 M 578, 587, 98 P 2d 872; State ex rel. Jensen Livestock Co. v. Hyslop, 111 M 122, 132, 107 P 2d 1088; United States v. Christensen, 218 F Supp 722, 725.

Collateral References

Taxation⇦778, 784, 785, 788 (8).
85 C.J.S. Taxation §§ 905-907, 963.

84-4171. (2216) **Assessment books, delinquent books, etc., prima facie evidence of what.** The assessment book, duplicate assessment book, or delinquent list, or a copy thereof certified by the county clerk, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of such taxes have been complied with.

History: En. Sec. 133, p. 115, L. 1891; re-en. Sec. 3900, Pol. C. 1895; re-en. Sec. 2656, Rev. C. 1907; re-en. Sec. 2216, R. C. M. 1921. Cal. Pol. C. Sec. 3789.

Collateral References

Taxation⇦644.
85 C.J.S. Taxation § 780.

84-4172. (2217) **Comparison of delinquent list with unpaid assessment.** The county treasurer must annually, on the third Monday of February, attend at the office of the county clerk with the delinquent list, and the county clerk must then carefully compare the lists with the assessments of persons and property not marked "paid" on the assessment book, and when taxes have been paid he must note the fact in the appropriate column in the assessment book.

History: En. Sec. 141, p. 116, L. 1891; re-en. Sec. 3908, Pol. C. 1895; re-en. Sec. 2664, Rev. C. 1907; re-en. Sec. 2217, R. C. M. 1921.

Collateral References

Taxation⇦557 (1).
84 C.J.S. Taxation § 664.

84-4173. (2218) **Oath administered to treasurer.** The county clerk must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid has been credited in the list with such payment.

History: En. Sec. 142, p. 117, L. 1891; re-en. Sec. 3909, Pol. C. 1895; re-en. Sec. 2665, Rev. C. 1907; re-en. Sec. 2218, R. C. M. 1921. Cal. Pol. C. Sec. 3798.

84-4174. (2219) **Final settlement of treasurer with clerk.** The county clerk must then foot up the amount of taxes remaining unpaid, and credit the treasurer with the amount, and have a final settlement with him; and the delinquent list must remain in the county clerk's office.

History: En. Sec. 143, p. 117, L. 1891; re-en. Sec. 3910, Pol. C. 1895; re-en. Sec. 2666, Rev. C. 1907; re-en. Sec. 2219, R. C. M. 1921. Cal. Pol. C. Sec. 3799.

Collateral References
Taxation⇐557 (1), 560.
84 C.J.S. Taxation §§ 664, 672.

84-4175. (2220) **Treasurer's affidavit endorsed on list.** At the time mentioned in section 84-4172 the treasurer must make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid, and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them.

History: En. Sec. 144, p. 117, L. 1891; re-en. Sec. 3911, Pol. C. 1895; re-en. Sec. 2667, Rev. C. 1907; re-en. Sec. 2220, R. C. M. 1921. Cal. Pol. C. Sec. 3800.

84-4176. (2222) **Taxes, etc., illegally collected to be refunded.** (1) Any taxes, per centum and costs, heretofore or hereafter, paid more than once or erroneously or illegally collected, and any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer, may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer, as provided in section 84-4401 of this code, and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties and costs so paid to the state treasurer, and upon the rendering of the report required by section 84-4402 of this code, the county clerk shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

(2) When any part of the taxes, penalties or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation, and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(3) No order for the refund of any taxes, per centum or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such tax, penalty or costs, or his guardian, or in case of his death by his executor or administrator, which claim must be filed within ten (10) years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

(4) All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county and the county treasurer shall then make such transfers from

other county funds and from state, school district and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such other funds.

History: En. Sec. 145, p. 117, L. 1891; re-en. Sec. 3913, Pol. C. 1895; re-en. Sec. 2669, Rev. C. 1907; re-en. Sec. 2222, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1939; amd. Sec. 1, Ch. 71, L. 1951. Cal. Pol. C. Sec. 3804.

Cancellation of Lien Against the Land

Taxes are not levied upon the property but upon the person; while the property which the person owns is used to determine the amount of the tax he shall pay, it is, after all, the person who pays the tax; he is liable. The property, under our statutes, is security for the payment (Ford Motor Co. v. Linnane, 102 M 325, 57 P 2d 803). Section 39, article V of the constitution, prohibits the cancellation of an obligation due the state, and the authority of the legislature to authorize cancellation of taxes in the sense of releasing taxpayer's obligation to pay, is doubted, however section 81-930 may be properly construed to mean the cancellation of the lien against the land reverting to the state. Christofferson v. Chouteau County, 105 M 577, 583, 74 P 2d 427, explained in 110 M 390, 394, 103 P 2d 303.

Erroneous and Illegal Assessments Distinguished

An erroneous assessment occurs when the taxing officers have power to act but err in the exercise of that power, and an illegal assessment takes place when they have no power to act at all. Christofferson v. Chouteau County, 105 M 577, 582, 74 P 2d 427.

"Erroneously Collected" Taxes

Decisions heretofore holding that sections 84-4502, 84-4504 and 84-4505 repeal this section as to all cases for which they provide an exclusive remedy, leaving open to the taxpayer the equitable remedy of injunction or legal remedy of suit under protest, were inadvertently made with reference to taxes "erroneously collected," as distinguished from taxes "illegally collected." (See First Nat. Bank of Plains v. Sanders County, 85 M 450, 279 P 247, considering the history of this section at length, and First Nat. Bank of Lima v. Beaverhead County, 88 M 577, 294 P 956.) Christofferson v. Chouteau County, 105 M 577, 581, 74 P 2d 427.

Mandamus To Compel Refund

Mandamus was not a proper remedy to compel the county commissioners to refund erroneously collected taxes, since this section gives a plain, speedy and adequate remedy at law. Moran v. Board of County Commrs., 139 M 351, 363 P 2d 1073, 1074.

"Paid More Than Once"

The portion of this section relating to taxes "paid more than once" must be deemed a special statute on the subject; where the board of county commissioners took no action on a claim for more than two years, the remedy by court action was available to the claimant, and in such action plaintiff is entitled to interest on the unlawful tax from the date of payment, even though plaintiff, to avoid the imputation that the payment made was voluntary, made it under protest. (See Christofferson v. Chouteau County, 105 M 577, 581, 74 P 2d 427.) Williams v. Harvey, 91 M 168, 171, 6 P 2d 418.

Purpose

The purpose of this section providing for refund of taxes erroneously collected, is to do justice in a class of cases where the application of the doctrine of caveat emptor or the common-law rule that where taxes are voluntarily paid they may not be recovered, will work a hardship to one who has paid money which it is inequitable for the county to retain. Christofferson v. Chouteau County, 105 M 577, 584, 74 P 2d 427.

Remission or Compromise of Taxes

Under this section authorizing the board of county commissioners to refund taxes when paid more than once or erroneously or illegally collected, it is without power to remit taxes which have never been paid or compromise delinquent taxes, and under section 39, article V of the state constitution, forbidding the release, remission or extinguishment of any obligation due the state or a municipal corporation therein, except by payment thereof into the proper treasury, the legislature may not confer such power. Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 10, 268 P 555.

Unwarranted or Illegal Action by Tax Officials

To authorize recovery under this section, there must have been unwarranted or illegal action on part of taxing officials. North Butte Min. Co. v. Silver Bow County, 118 M 618, 169 P 2d 339, 340.

Voluntary Payment—Mistake of Law

Where mining company furnished statement to county of its gross yield, errone-

ously including the bonus or subsidy received from the government because of mistake of law, and paid taxes based on that statement without protest, mining company was not entitled to recover the taxes under this statute. North Butte Min. Co. v. Silver Bow County, 118 M 618, 169 P 2d 339, 340.

References

Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 426, 158 P 682; Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, 981.

Collateral References

Taxation⇐821 (1-3).
85 C.J.S. Taxation § 1008.
51 Am. Jur. 1005, Taxation, § 1167 et seq.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Permissive or mandatory character of legislation providing for refund of taxes illegally assessed or collected. 103 ALR 817.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Assignability of claim for tax refund, and rights of assignee in respect thereof. 134 ALR 1202.

Right of property taxpayer to recover back taxes voluntarily but mistakenly paid a second or successive time. 84 ALR 2d 1133.

Right to interest on tax refund or credit in absence of specific controlling statute. 88 ALR 2d 823.

DECISIONS UNDER FORMER LAW

Constitutionality

The decision in Yellowstone Packing & P. Co. v. Hays, 83 M 1, 268 P 555, declaring the portion of section 2222, R. C. M. 1921, unconstitutional with reference to refunds by the state auditor to the county treasurer, reaffirmed. Christofferson v. Chouteau County, 105 M 577, 586, 74 P 2d 427.

84-4177. Concurrent remedies. All acts and parts of acts in conflict herewith are hereby repealed, but none of the provisions of this act shall be deemed or construed to be in conflict with the provisions of sections 84-4502 to 84-4505, inclusive, of this code, but this act and the provisions of such sections shall provide and afford concurrent remedies.

History: En. Sec. 2, Ch. 201, L. 1939.

84-4178. (2223) **When property assessed more than once.** When the treasurer discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts under affidavit, to the county clerk.

History: En. Sec. 146, p. 117, L. 1891; re-en. Sec. 3914, Pol. C. 1895; re-en. Sec. 2670, Rev. C. 1907; re-en. Sec. 2223, R. C. M. 1921. Cal. Pol. C. Sec. 3805.

County Treasurer—Double Tax

If, under chapter 72, Laws of 1937, amending sections 53-107, 53-114, 53-116, 53-117, 53-118, and 84-406, relating to registration, licensing and taxation of motor vehicles, double taxation of the same vehicle should result under certain conditions, once in the hands of the dealer and once in the hands of the purchaser, it is the duty of the county treasurer, under this section, to collect only the tax justly due. Wheir v. Dye, 105 M 347, 360, 73 P 2d 209.

Purpose of Statute

The provisions of this section and section 84-4176, and others of like import, are intended to secure the collection of lawful revenue, and to protect the owner whose property is made to bear more than its just proportion of the burden of taxation, and were not enacted to secure immunity from taxation to any one. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 426, 158 P 682.

References

State ex rel. Sadler v. Evans, 106 M 286, 290, 77 P 2d 394.

Collateral References

Taxation⇐550.
84 C.J.S. Taxation § 657.

84-4179. (2224) **Land irregularly assessed, etc., not to be sold.** If the treasurer discovers before the sale that on account of irregular assessment,

or of any other assessment, any land ought not to be sold, he must not offer the land for sale, and the board of county commissioners must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon.

History: En. Sec. 147, p. 118, L. 1891; re-en. Sec. 3915, Pol. C. 1895; re-en. Sec. 2671, Rev. C. 1907; re-en. Sec. 2224, R. C. M. 1921. Cal. Pol. C. Sec. 3806.

Collateral References

Taxation⇐631.
85 C.J.S. Taxation § 759.

84-4180. (2225) **Mistakes which do not affect sale of property for taxes.** When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof affects the sale or renders it void or voidable.

History: En. Sec. 148, p. 118, L. 1891; re-en. Sec. 3916, Pol. C. 1895; re-en. Sec. 2672, Rev. C. 1907; re-en. Sec. 2225, R. C. M. 1921. Cal. Pol. C. Sec. 3807.

Due Process

Tax sale is a proceeding in rem against the property itself and not in personam. Thus a notice with description of the property accurately contained therein suffices to support any requirements of due process. Meyer v. Chessman, 132 M 187, 315 P 2d 512, 514.

Informality or Irregularity

Where land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake being in the nature of an informality or irregularity only. Cullen v. Western Mtg. & Warranty Title Co., 47 M 513, 524, 134 P 302.

Personal Property

This section does not apply to personal property. Birney v. Warren, 28 M 64, 67, 72 P 293.

Proceedings for Tax Sale

Defendants in quiet title action acquired no property rights in disputed land by deed from transit company because at the time they received deed, transit company had already been divested of title in proceedings for the taking of a tax deed. Meyer v. Chessman, 132 M 187, 315 P 2d 512, 514.

References

Cobban v. Hinds, 23 M 338, 349, 59 P 1; Vail v. Custer County, 132 M 205, 315 P 2d 993, 999.

Collateral References

Taxation⇐692.
85 C.J.S. Taxation § 830.

84-4181. (2226) **Collection of taxes from persons assessed, but removed to another county.** If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made.

History: En. Sec. 149, p. 118, L. 1891; re-en. Sec. 3917, Pol. C. 1895; re-en. Sec. 2673, Rev. C. 1907; re-en. Sec. 2226, R. C. M. 1921. Cal. Pol. C. Sec. 3808.

Collateral References

Taxation⇐585.
84 C.J.S. Taxation § 698.

84-4182. (2227) **Evidence on trial of suit for such taxes.** On the trial a certified copy of the assessment, signed by the county clerk of the county where the same was made, with the affidavit of the treasurer thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is prima facie evidence that such tax and the per centum are due, and entitles him to judgment, unless the defendant proves that the tax was paid.

History: En. Sec. 150, p. 118, L. 1891; re-en. Sec. 3918, Pol. C. 1895; re-en. Sec. 2674, Rev. C. 1907; re-en. Sec. 2227, R. C. M. 1921. Cal. Pol. C. Sec. 3809.

Collateral References
Taxation⇐593 (3).
84 C.J.S. Taxation § 711.

84-4183. (2228) **Allowance and payment of expense of such proceeding.** The treasurer and county clerk must allow the expenses of collecting such tax, and permit a deduction thereof from the amount collected, if they do not exceed one-third of the amount of the tax collected.

History: En. Sec. 3919, Pol. C. 1895; re-en. Sec. 2675, Rev. C. 1907; re-en. Sec. 2228, R. C. M. 1921.

Collateral References
Taxation⇐598.
84 C.J.S. Taxation § 713.

84-4184. (2229) **Protest against sale requisite, when assessment void in part, to invalidate sale or grant thereunder.** Whenever property is advertised for sale for the nonpayment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale must not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, not less than six days before the time at which the property is advertised to be sold, delivers to the treasurer a protest in writing, signed by the owner or agent, specifying the portion of the tax which he claims to be invalid, and the ground upon which such claim is based.

History: En. Sec. 151, p. 118, L. 1891; re-en. Sec. 3920, Pol. C. 1895; re-en. Sec. 2676, Rev. C. 1907; re-en. Sec. 2229, R. C. M. 1921.

Collateral References
Taxation⇐692.
85 C.J.S. Taxation § 830.

84-4185. (2230) **Duty of treasurer on delivery of such protest.** In case any owner of property advertised to be sold for delinquent taxes, at least six days before the time advertised for the sale to take place, delivers to the county treasurer his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in whole or in part, and if in part only, for what portion, and in either case specifying the grounds upon which such claim is founded, it is the duty of the treasurer either:

1. To sell the property assessed for the whole amount appearing upon the duplicate assessment book; or

2. Withdraw the property from sale, and report the case to the board of county commissioners for its direction in the premises; and in such case the board may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the treasurer to proceed with the sale.

History: En. Sec. 152, p. 119, L. 1891; re-en. Sec. 3921, Pol. C. 1895; re-en. Sec. 2677, Rev. C. 1907; re-en. Sec. 2230, R. C. M. 1921.

Collateral References
Taxation⇐619.
85 C.J.S. Taxation § 754.

84-4186. (2231) **Assessment of property on which a tax sale certificate has been purchased by county and adjournment of sale thereof.** In case a tax sale certificate on property assessed for taxes is purchased by the county, or otherwise, pursuant to provisions of section 84-4124, it must be

assessed for taxes the next year in the same manner as if it had not been so purchased. If the taxes resulting from such assessment are not paid when such taxes become due, said property shall again be sold, in manner as above described, and said assessment of such property, and the sale of same, when the said taxes have not been paid upon coming due, or the property redeemed, shall be continued until the time when such property shall have been redeemed from such sales; provided, however, that no tax deed shall issue to any purchaser, other than the county under said sales, until the applicant for such tax deed shall have paid and discharged all taxes, penalty and interest accumulated at the time of such application. Providing further that purchasers of certificates of tax sale, for years subsequent to the oldest outstanding tax sales certificate, shall have the same privilege of redemption, of such oldest outstanding tax sales certificate, as is the privilege of the original owner of the property. Nothing herein contained shall be construed to apply to holders of tax certificates, other than counties, at the time this act becomes effective.

History: En. Sec. 153, p. 119, L. 1891; re-en. Sec. 3922, Pol. C. 1895; re-en. Sec. 2678, Rev. C. 1907; re-en. Sec. 2231, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1937. Cal. Pol. C. Sec. 3813.

Injunction

The fact that the treasurer intends to violate this section and section 84-4187, by exposing for sale, for the delinquent taxes of one year, part of the lands purchased by the county at the sale for the taxes of the preceding year, and yet unredeemed, does not entitle the owner of the equity of redemption to an injunction. Cobban v. Hinds, 23 M 338, 350, 59 P 1, explained in 23 M 558, 563, 59 P 916.

References

Sanderson v. Bateman, 78 M 235, 248, 253 P 1100; Hinz v. Musselshell County, 82 M 502, 513, 267 P 1113; Tilden v. Chouteau County, 85 M 398, 402, 279 P 231; Morse v. Kroger, 87 M 54, 62, 285 P 185; State ex rel. Souders v. District Court, 92 M 272, 12 P 2d 852.

Collateral References

Taxation⊂⇒679 (3), (5), 697 (6).
85 C.J.S. Taxation §§ 836, 838, 847.

84-4187. (2232) **No sale unless directed by board of county commissioners.** In case an assessment is made under the provisions of the next preceding section and the lands are not redeemed from a previous sale had under section 84-4124, as provided by law, no sale must be had under the assessment authorized by the next preceding section unless directed by the board.

History: En. Sec. 154, p. 119, L. 1891; re-en. Sec. 3923, Pol. C. 1895; re-en. Sec. 2679, Rev. C. 1907; re-en. Sec. 2232, R. C. M. 1921. Cal. Pol. C. Sec. 3814.

References

Cobban v. Hinds, 23 M 338, 350, 59 P 1; Hinz v. Musselshell County, 82 M 502, 267 P 1113.

Collateral References

Taxation⊂⇒679 (5).
85 C.J.S. Taxation § 838.

84-4188. (2233) **Conditions of redemption of property sold to county.** In case property is sold to the county as purchaser, pursuant to section 84-4124 of this code, and is subsequently assessed, pursuant to section 84-4186 of this code, no person must be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees, and interest.

History: En. Sec. 155, p. 120, L. 1891; re-en. Sec. 3924, Pol. C. 1895; re-en. Sec. 2680, Rev. C. 1907; re-en. Sec. 2233, R. C. M. 1921. Cal. Pol. C. Sec. 3815.

Statement of Amount Due for Taxes

Under section 84-4154, and this section, requiring a redemptioner to pay, in addition to the amount for which the property

was sold, the subsequent taxes paid by the purchaser, and section 84-4151, declaring that the notice which the purchaser must give when he applies for a tax deed must contain the amount due, a notice of application for a deed to land sold for taxes assessed against it in 1921, including a statement of the amount due for taxes for the year 1920, did not state the correct amount due and was invalid and therefore, the deed based thereon was likewise void. Tilden v. Chouteau County, 85 M 398, 402, 279 P 231.

References

Sanderson v. Bateman, 78 M 235, 248, 253 P 1100; Hinz v. Musselshell County, 82 M 502, 513, 267 P 1113; Morse v. Kroger, 87 M 54, 62, 285 P 185.

Collateral References

Taxation⇐709 (2), (3).
85 C.J.S. Taxation §§ 874, 875.
51 Am. Jur. 953, Taxation, § 1097 et seq.

84-4189. (2234) **Distribution of such redemption moneys, accounts, etc.** Whenever property sold to the county, pursuant to the provisions of this chapter, is redeemed as herein provided, the moneys received on account of such redemption must be distributed as follows:

The original tax and the penalty and interest thereon paid in redemption must be apportioned and prorated to the credit of all the various funds, including state, county, school, school district, city, or town in the ratio of their respective shares of the original tax. The county treasurer must keep an accurate account of all money paid in redemption of property sold to the county, and must, on the first Monday of June in each year make a detailed report, verified by his affidavit, of each account, year for year, to the state auditor, in such form as the state auditor may desire. Whenever the county receives from the county treasurer any grant of property so sold for taxes, the same shall be recorded, at the request of the county treasurer, free of charge, by the county clerk, and shall be immediately reported by the county treasurer to the board of county commissioners.

History: En. Sec. 156, p. 120, L. 1891; re-en. Sec. 3925, Pol. C. 1895; re-en. Sec. 2681, Rev. C. 1907; re-en. Sec. 2234, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1929. Cal. Pol. C. Sec. 3816.

References

State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 159, 252 P 805; Sanderson v. Bateman, 78 M 235, 248, 253 P 1100.

Collateral References

Taxation⇐724.
85 C.J.S. Taxation § 891.

DECISIONS UNDER FORMER LAW

Apportionment between State and County

This section, prior to 1929 amendment providing that where property is redeemed from tax sale the original tax and twenty per cent paid in redemption shall be apportioned between the state and county, the balance to go to the county, applies only to moneys collected on payment of delinquent taxes levied for state and county purposes, and not to those paid on taxes levied for the support of, inter alia, school districts, but as to such moneys the latter are entitled to their proportionate shares. School District No. 12 v. Pondera County, 89 M 342, 345 et seq., 297 P 498.

If this section, prior to 1929 amendment, were construed literally, to wit, as entitling the county to all interest and penalty paid on redemption from tax sales, to the exclusion of other political subdivisions interested therein, the statute would be unconstitutional as offending against the equal protection clause of the constitution, in that it would relieve the county of a part of the burden of taxation to the detriment of such other subdivisions. School District No. 12 v. Pondera County, 89 M 342, 345 et seq., 297 P 498.

84-4190. Sale of county tax deed lands—procedure—preferential repurchase rights. Whenever the county shall hereafter acquire any land by

tax deed, it shall be the duty of the board of county commissioners within six (6) months after acquiring title, to make and enter an order for sale of such lands at public auction at the front door of the courthouse, provided, however, that thirty (30) days' notice of such sale shall be given by publication in a newspaper printed in the county. Such notice shall be published once a week for three (3) consecutive weeks, and shall be posted in at least three (3) public places in the county. Notice posted and published shall be signed by the county clerk and one (1) notice may include a list of all lands to be sold, the appraised value of same, and the time and place of sale, and no sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners prior to making the order of sale, which value shall be stated in the notice of sale. Provided further, that at any time before the time fixed for the first offering of said property for sale, notice of which has been given as above provided, the taxpayer or successor in interest, or legal representative, whose property shall hereafter be deeded to the county, may purchase such property subject to the reservations hereinafter provided, by payment to the county of the full amount of the taxes, penalties and interest due on said land at the time of taking said tax deed, and such purchase and payment may be effected by an installment contract with annual payments as hereinafter provided.

(a). That all persons whose property has heretofore been deeded to the county, or the successors in interest of such persons, or legal representatives, who have acquired any preferential right to purchase such property, prior to the date fixed for sale of such property, or while the title to the same remains in the name of the county, under the provisions of section 2235, Revised Codes of Montana, 1935, as amended by chapter 181, session laws of Montana, 1939, are hereby given six (6) months after the effective date of this act in which to exercise such preferential right to so repurchase said property in accordance with the provisions of said laws above herein referred to, and if such rights are not so exercised within said period of six (6) months, said preferential rights shall terminate and thereafter forever be barred.

(b). The county clerk and recorder of each and every county of the state of Montana, if such clerk and recorder's county has heretofore taken county deeds to property in which such preferential rights exist (or may exist), shall cause to be published and circulated at least once a week in such county, a full, true and correct copy of subsection (a) of this act, said notice to also include the effective date of this act. Such clerk and recorder shall cause said notice to be published once a week for three (3) consecutive weeks, in such paper, and post three (3) copies of such notice in at least three (3) public places in the county; the first publication to be within thirty (30) days after the effective date of this act.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945.

NOTE.—Chapter 171, Laws of 1941 repealed section 2235, R. C. M. 1935, referred to in subsection (a) of this section, which formerly governed the sale of unredeemed county tax deed property. The history of that section is as follows: En. Sec. 157, p. 120, L. 1891; re-en. Sec. 3926, Pol. C. 1895; re-en. Sec. 2682, Rev. C. 1907; amd. Sec. 1, Ch. 123, L. 1909; amd. Sec. 1, Ch. 18, L. 1919; re-en. Sec. 2235, R. C. M. 1921; amd. Sec. 3, Ch. 85, L. 1927; amd. Sec. 1, Ch. 162, L. 1929; amd. Sec. 1, Ch. 33, Ex. L. 1933; amd. Sec. 1, Ch. 181, L. 1939.

Owner's Right to Redeem

In mandamus proceedings where defendant county acquired land of plaintiff delinquent taxpayer by tax deed, and the latter offered to pay the delinquent taxes, penalty and interest the second time the land was offered for sale, but the commissioners refused the taxes and sold the land to another on the ground that the owner lost his preferential right for failure to exercise it on the first sale, district court did not err in finding for plaintiff since, under chapter 181, Laws of 1939 (since repealed) and sections 84-4190 to 84-4197, the general policy of the law is to preserve the owner's right to redeem regardless of prior failure and without any proviso that it be deemed lost for prior failure to exercise it. State ex rel. Johnson v. Garfield County, 116 M 300, 302, 151 P 2d 481, distinguished in 120 M 305, 309, 184 P 2d 347.

Preferential Right of Purchase

The preferential right to purchase from the county for only the amount of the taxes, penalties and interest is purely statutory and, if claimed, must be exercised in the manner and within the time provided by statute or the right becomes lost. Beckman Bros. v. Weir, 120 M 305, 184 P 2d 347, 348.

This law, unlike earlier laws, does not provide that the preferential right to purchase by the owner must be exercised "before such sale" but "before the date fixed for such sale" and where the right was not exercised before such date, former owner could not thereafter insist on such right although no sale had been made. Beckman Bros. v. Weir, 120 M 305, 184 P 2d 347, 349.

Purchase from County Not Redemption

The purchase of tax-acquired property from the county by the former owner is not a redemption. Beckman Bros. v. Weir, 120 M 305, 184 P 2d 347, 348.

Reservation of Interest by County

A county may reserve such interests in tax deed land as it may have acquired by purchase or as may have been reserved by a private seller, including the right to take road building material from the land for authorized public use. Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

References

State ex rel. Engle v. District Court, 119 M 319, 174 P 2d 582; State ex rel. Rich v. Garfield County, 120 M 568, 188 P 2d 1004; Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 502.

DECISIONS UNDER FORMER LAW

Sale of Tax-title Owned Land without Notice to Lessee

In an action to quiet title against former owner of tract of farm land, title to which had been acquired by county by tax deed, the former continuing in possession and farming it under a lease from the county containing provision that in case the county, after two futile attempts to sell the property, should place it on sale, lessee should receive notice so as to enable him to buy it, authorized by section 2208.1, R. C. M. 1935 (repealed by Sec. 10, Ch. 171, Laws 1941) and another purchased it at private sale without making inquiry of the occupant or inspection of the county records, he was not an innocent purchaser as against any rights of lessee under agreement. Deed ordered canceled. Berger v. Johnson, 116 M 270, 273, 151 P 2d 586.

84-4191. Terms of sale—sale contract—deed of conveyance. Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of four per cent (4%) per annum.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, the chairman of

the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may in the discretion of the board of county commissioners reserve not to exceed six and one-fourth per cent (6¼%) royalty interest in the oil, gas, other hydrocarbons and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949.

Power To Reserve Mineral Rights

In the sale of land acquired by tax deed, the county has such powers as may be exercised by a private seller of land, and these powers include the waiver of forfeiture provisions in a contract after a forfeiture has been declared and the right to reserve the right to take road building material from the land for authorized public use. Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

84-4192. Land subject to taxation to purchaser—when. On the first Monday of March following the execution of such contracts or deed the land shall be subject to taxation in the name of the purchaser or his assignee and in the event the taxes are not paid and the same become delinquent said contract shall be subject to cancellation and all payments theretofore made shall be taken, treated, and regarded as rent for said property.

History: En. Sec. 3, Ch. 171, L. 1941.

84-4193. Unsold land—how disposed of—interest rate. In the event any of said lands are not sold at such public sale the county commissioners may at any time either again appraise, advertise, and offer the same at public auction or sell the same at private sale at the best price obtainable at not less than ninety per cent (90%) of the last appraised value and on such terms as may be agreed upon, provided the rate of interest on deferred payments shall be four per cent (4%) per annum and provided, further, that the terms other than price as to each class of land, grazing, farming, and irrigated, shall be uniform in each county.

History: En. Sec. 4, Ch. 171, L. 1941.

References

Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 502.

84-4194. Lease of lands not sold—royalty reserved in leases for mineral or oil and gas purposes—pooling agreement. Whenever such lands have been offered for sale at public auction and not sold, the county commissioners may, if deemed for the best interests of the county, lease said lands upon the best terms obtainable for farming, grazing, or for oil and gas development purposes, provided that such lease, when for farming land, shall not extend over a period longer than three (3) years, and when for grazing lands, such shall not extend over a period longer than five (5) years, except lands within a legally created or thereafter to be created grazing district when such lease may run for a period of not to exceed ten (10) years, provided, lands leased for all purposes may be subject to sale at the discretion of the board of county commissioners during the term of the lease and leases shall be subject to all rules and regulations relative to land use policies or regulations to best advance public welfare and benefit, that

may be adopted by the board of county commissioners with the advice of the county agricultural planning committee and provided, further, that the lease rental may vary according to the livestock grazing capacity of the lands leased as determined by the board of county commissioners, and when for mineral or oil and gas purposes, said lease shall be for such terms as the board of county commissioners shall deem to be for the best interest of the county, and reserve a royalty of twelve and one-half per cent (12½%) which shall include any royalty payable to any person other than the county.

When deemed in the best interest of the county, the county commissioners may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements, and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases. The county commissioners may also, after any of said lands have been offered for sale and not sold when it is deemed for the best interest of the county, exchange said lands for other lands of equal value where the effect of such exchange would be to acquire land which could be leased or sold to better advantage.

History: En. Sec. 5, Ch. 171, L. 1941; amd. Sec. 1, Ch. 82, L. 1943; amd. Sec. 1, Ch. 48, L. 1945.

84-4195. Apportionment of proceeds of sales and leases. The proceeds of every such sale or lease shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

(a) Upon a lease of the property the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease shall be apportioned on the current year's levy and shall be credited as earnings of tax deed property and not considered as a credit to tax deed accrued accounts, as in the case of the principal received from sales of tax deed lands.

(b) Whenever tax deed lands have been sold and the county has reserved a royalty interest, any sums of money received from such royalty interest shall be credited to the general fund of the county.

(c) Upon a sale of such property the proceeds of each sale up to the amount of ten dollars ($10.00) shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the procurement of tax deed and holding sale.

(d) Upon a sale of the property if there be any amount remaining of such proceeds after the payment of the amount specified in subdivision (c) hereof and such remainder is in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose, as the same would have

received had such taxes been paid before becoming delinquent and all excess shall be credited to the general fund of the county.

(e) Upon such sale if there shall be any amount remaining of such proceeds after the payment of the amount specified in subdivision (c) hereof and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

History: En. Sec. 6, Ch. 171, L. 1941; amd. Sec. 1, Ch. 81, L. 1943; amd. Sec. 1, Ch. 144, L. 1955.

84-4196. Confirmation of oil and gas leases heretofore made. That all reservations of royalty interest in oil, gas, and minerals heretofore made or attempted to be made by counties in the sale of tax deed lands and all oil and gas leases heretofore made or attempted to be made by counties covering tax deed lands, whether or not irregular or void for any reason, are hereby confirmed and declared to be legal and valid, notwithstanding the provisions of any law to the contrary.

History: En. Sec. 7, Ch. 171, L. 1941.

84-4197. Sale of lands less than fifty dollar valuation and other lands. That property belonging to the county of the value of less than fifty dollars ($50.00) and property of the county acquired by means other than by tax deed may be sold as provided by section 16-1009, and except so far as it may conflict with the provisions of this act, said section 16-1009 shall remain in force and effect. Nothing herein contained shall be construed as repealing sections 16-1132, 16-1133, 16-1134 and 16-1135.

History: En. Sec. 8, Ch. 171, L. 1941.

84-4198. Lessee of tax-deed lands has right within 30 days to purchase at appraised value. Whenever tax deed lands now held, or hereafter acquired, by any county of this state, have been leased pursuant to the provisions of section 84-4194, and thereafter the board of county commissioners shall receive an offer for the purchase of said lands under the provisions of section 84-4193, the said board shall by registered mail notify the lessee, who shall have a period of thirty (30) days after the mailing of such notice within which he may purchase the leased property at the appraised value thereof. Provided that nothing herein contained shall prohibit the board from, at any time, reappraising, readvertising and offering such land at public sale under the provisions of section 84-4190. When tax deed lands held by the county are offered at public sale, pursuant to the provisions of section 84-4190, the lessee of such lands need not make a higher bid than others, but shall if bidding an amount equal to the highest bidder be given the preference.

History: En. Sec. 1, Ch. 147, L. 1943; amd. Sec. 1, Ch. 75, L. 1963.

Reappraisal

Where county had acquired land under

tax deed and leased it, and another person offered to purchase the land from the county at a price in excess of the appraised value, it was proper to reappraise the land at the offered price and advertise it for sale, and the lessee of the land had no statutory right to require the county to sell the land to him at its appraised value. State ex rel. Rich v. Garfield County, 120 M 568, 188 P 2d 1004.

84-4199. Validation of certain contracts for purchase of tax title lands. All installment contracts for the purchase of tax title lands heretofore entered into between any county and the former owner of such lands to which the county has taken tax deed, which contracts provide that deferred installments shall bear interest at the rate of four per cent (4%) instead of six per cent (6%) as provided by section 16-1009 are hereby validated and legalized and no such contract shall be held invalid by reason of the provisions thereof relating to interest.

History: En. Sec. 1, Ch. 9, L. 1941.

84-41-100. Validation of tax deeds notwithstanding failure to classify lands. No tax deed heretofore or hereafter issued in this state shall be held invalid, nor shall its legality be in any manner whatsoever affected by reason of the prior failure of the board of county commissioners of any county to provide for the classification of the lands in such county as required by sections 84-430 to 84-437. This enactment shall be retroactive and shall apply to all tax deeds heretofore as well as those hereafter issued under any law of the state of Montana providing a method of applying for and securing deed to lands sold for delinquent taxes. All tax deeds heretofore issued under the laws of Montana are hereby legalized and declared to be valid, notwithstanding that the lands thereby conveyed may not have been classified under the statutes herein referred to.

History: En. Sec. 1, Ch. 61, L. 1941.

NOTE.—Sections 84-430 to 84-437, referred to in this section, were repealed by Sec. 7, Ch. 198, Laws 1955. For new provisions governing classification and appraisal, see secs. 84-429.7 to 84-429.13.

84-41-101. (2235.1) **Repealing and saving clause.** All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that this act is not intended, and nothing herein shall be deemed intended, either to repeal or displace chapter 89 of the laws of the nineteenth legislative assembly of the state of Montana. (Sections 89-1822 to 89-1829).

History: En. Sec. 2, Ch. 33, Ex. L. 1933.

84-41-102. (2235.2) **Saving clause.** Nothing herein contained shall be held or construed as an amendment or modification of sections 84-4140 through 84-4143.

History: En. Sec. 3, Ch. 33, Ex. L. 1933.

84-41-103. (2236) **Suspension of taxes on property owned by persons in military or naval service.** All taxes, whether on real or personal property, now due or hereafter to become due on property owned by any citizen of the state of Montana in the active military or naval service of the United States, shall be held in abeyance, and no proceedings taken for the collection thereof, and no penalties or interests shall be added thereto, until the

expiration of the period of one year from and after the cessation of hostilities or discharge from military or naval service.

History: En. Sec. 1, Ch. 14, Ex. L. 1918; re-en. Sec. 2236, R. C. M. 1921.

Collateral References
Taxation⇐219.
84 C.J.S. Taxation § 240.

84-41-104. (2237) **Affidavit to be filed with county treasurer.** To obtain the benefits of this act it shall be necessary for some person, on behalf of such person in the military or naval service, to file with the treasurer of the proper county an affidavit to the effect that the person against whom such taxes are charged is in such active military or naval service, which affidavit must be filed at or before the time when such taxes would become delinquent, and upon the filing thereof the treasurer shall make a notation upon his records to the effect that the collection of such taxes is suspended on account of the military or naval service of such taxpayer. But nothing in this act shall be so construed as to prevent such county treasurer from receiving payment of any such taxes whenever offered.

History: En. Sec. 2, Ch. 14, Ex. L. 1918; re-en. Sec. 2237, R. C. M. 1921.

Collateral References
Taxation⇐251.
84 C.J.S. Taxation § 304.

CHAPTER 42

COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE—ROAD AND POOR TAXES

Section 84-4201. Duty of assessor.
84-4202. Duty of treasurer.
84-4203. Mode of conducting seizure and sale.
84-4204. Manner of conducting sale, etc.
84-4205. Treasurer's charges and mileage for sale or seizure.
84-4206. Title to such property vests in purchaser on payment.
84-4207. Disposition of excess of proceeds over taxes, percentage and costs.
84-4208. Unsold portion to remain at risk of owner.
84-4209. Rate of taxation where property is taxable.
84-4210. Treasurer's record.
84-4211. Assessor to note report of property.
84-4212. Repealed.
84-4213. Treasurer's duty to collect road and poor taxes—seizure and sale of property—when road and poor tax to be paid.
84-4214. Procedure for sale of property.
84-4215. List of personal property taxes delinquent ten years—list of contractual obligations barred by statute of limitations.
84-4216. Cancellation of such taxes and obligations—filing of lists.
84-4217. Adjustment of accounts after cancellation.

84-4201. (2238) **Duty of assessor.** It shall be the duty of the assessor, upon discovery of any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than five days thereafter, make a report to the treasurer, setting forth the nature, kind, description and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same. Where such personal property is

located in any city or town, which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treasurer a duplicate of such notice to the county treasurer. For the purpose of determining the taxes due on such personal property, the assessor must use the levy made during the previous year.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 24, L. 1925; amd. Sec. 1, Ch. 143, L. 1929; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951. Cal. Pol. C. Sec. 3820.

References

Northwestern Mut. Life Ins. Co. v. Lewis and Clarke County, 28 M 484, 502, 72 P 982; Averill Machinery Co. v. Freebury Bros., 59 M 594, 598, 198 P 130; Wheir v. Dye, 105 M 347, 352, 358, 73 P 2d 209.

Collateral References

Taxation⇨553.
84 C.J.S. Taxation § 659.
51 Am. Jur. 830, Taxation, § 943 et seq.

DECISIONS UNDER FORMER LAW

Assessment of Real Estate

The statutes in force in 1889, regulating taxation, contemplated the assessment of each distinct parcel of real estate separately, and created a direct lien on each parcel only for the tax levied thereon, and the lands of a delinquent taxpayer were not chargeable thereunder with a direct lien for a personalty tax. Ward v. Board of Commrs. of Gallatin County, 12 M 23, 38, 29 P 658.

Collection of Taxes

Section 3940 of the Political Code, which required the assessor to collect taxes on all personal property, when, in his opinion, such taxes were not a lien on real property sufficient to secure payment of the personal property tax, was unconstitutional since the legislature has no power to vest any other person than the treasurer with power to collect taxes. Mutual Life Ins. Co. of New York v. Martien, 27 M 437, 440, 71 P 470. See also Missouri River Power Co. v. Steele, 32 M 433, 437, 80 P 1093; City of Butte v. Bennetts, 51 M 27, 30, 149 P 92; Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 M 572, 577, 160 P 515.

National Bank

Personal property of a national bank is not subject to taxation under the state laws. First Nat. Bank of Billings v. Province, 20 M 374, 51 P 821.

84-4202. (2239) **Duty of treasurer.** The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the assessor's report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the

willful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lien holder, if any.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R. C. M. 1921; amd. Sec. 2, Ch. 102, L. 1923; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963. Cal. Pol. C. Sec. 3821.

NOTE.—This section superseded section 2657, Revised Codes of 1907. See Averill Machinery Co. v. Freebury Bros., 59 M 594, 598, 198 P 130.

Constitutionality

Section 2684, Revised Codes of 1907 (this section) relating to the collection of taxes on personal property, was not open to the objection that it is unconstitutional on the ground that the title of chapter 119, Laws of 1903, amending this section among others, as section 3941, Codes of 1895 (since repealed), does not enumerate said section 3941 as among those amended, such objection having been removed by the adoption of the Revised Codes of 1907. Averill Machinery Co. v. Freebury Bros., 59 M 594, 598, 198 P 130.

County Assessor—Collection of Taxes

No duty to collect city and county taxes is imposed upon the county assessor by this section. City of Butte v. Bennetts, 51 M 27, 30, 149 P 92.

Resort to Property

Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment where the owner makes default. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1016.

Seizure and Sale of Cattle

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, county had a lien for the tax under sections 84-3807 and 84-3808 and properly seized and noticed up for sale on May 7, 1963, 200 head of cattle, as the lien was not limited to 1960 cattle by this section as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1015.

Collateral References

Taxation⇐516, 550, 568 (1), 582.
84 C.J.S. Taxation §§ 608, 657, 679, 695.
51 Am. Jur. 830, Taxation, § 943 et seq.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.

DECISIONS UNDER FORMER LAW

Notice

Section 2242, Revised Codes of 1921 (omitted) relative to notice of time and place of sale of personal property seized for delinquent taxes, in conflict with section 2, chapter 102, Laws of 1923, amendatory of this section, was repealed by the 1923 act. Perham v. Putnam, 82 M 349, 358, 267 P 305.

Under this section, sales of personal property seized for taxes must be conducted by the county treasurer who is required to proceed in the manner prescribed for sales of property on execution by the sheriff, the treasurer being empowered to appoint the sheriff as his deputy for the purpose of making the sale. The notice posted by the sheriff,

as such deputy, of the sale of an automobile for delinquent taxes was entitled "Execution sale of personal property for taxes" instead of treasurer's sale of personal property seized for taxes, and entitled as a court action, it being signed by the sheriff and his deputy. Since the notice was in effect one of a sheriff's and not a treasurer's sale, it did not comply with the statute, and rendered the sale void. Perham v. Putnam, 82 M 349, 358, 267 P 305.

Sale of Real Estate

Under the statutes in force in 1889, the county treasurer, as collector of taxes, was not required to seize and sell the personal property of a delinquent taxpayer, or to sue for the tax, before proceeding to sell the real estate assessed to such delinquent. Ward v. Board of Commrs. of Gallatin County, 12 M 23, 38, 29 P 658.

84-4203. (2240) **Mode of conducting seizure and sale.** The provisions of sections 84-4202 to 84-4208, inclusive, apply to such seizure and sale.

History: En. Sec. 3942, Pol. C. 1895; re-en. Sec. 2685, Rev. C. 1907; re-en. Sec. 2240, R. C. M. 1921. Cal. Pol. C. Sec. 3822.

Collateral References

Taxation⊂⇒582.
84 C.J.S. Taxation § 695.

84-4204. (2241) **Manner of conducting sale, etc.** The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentages, and costs.

History: En. Sec. 135, p. 116, L. 1891; re-en. Sec. 3902, Pol. C. 1895; re-en. Sec. 2658, Rev. C. 1907; re-en. Sec. 2241, R. C. M. 1921.

84-4205. (2243) **Treasurer's charges and mileage for sale or seizure.** For seizing or selling personal property, the treasurer may charge in each case the sum of three dollars, for the use of the county, and the same mileage as is allowed by law to the sheriff of the county, and reasonable expenses for seizing, handling, keeping, or caring for any property so seized or sold.

History: En. Sec. 137, p. 116, L. 1891; re-en. Sec. 3904, Pol. C. 1895; re-en. Sec. 2660, Rev. C. 1907; re-en. Sec. 2243, R. C. M. 1921.

84-4206. (2244) **Title to such property vests in purchaser on payment.** On the payment of the price bid for any property sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

History: En. Sec. 138, p. 116, L. 1891; re-en. Sec. 3905, Pol. C. 1895; re-en. Sec. 2661, Rev. C. 1907; re-en. Sec. 2244, R. C. M. 1921.

References

Averill Machinery Co. v. Freebury Bros., 59 M 594, 598, 198 P 130.

84-4207. (2245) **Disposition of excess of proceeds over taxes, percentage and costs.** All excess over the taxes, per cent, and costs of the proceeds of any such sale must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury, subject to the order of the owner, heirs, or assigns.

History: En. Sec. 139, p. 116, L. 1891; re-en. Sec. 3906, Pol. C. 1895; re-en. Sec. 2662, Rev. C. 1907; re-en. Sec. 2245, R. C. M. 1921.

84-4208. (2246) **Unsold portion to remain at risk of owner.** The unsold portion of any property may be left at the place of sale at the risk of the owner.

History: En. Sec. 140, p. 116, L. 1891; amd. Sec. 3907, Pol. C. 1895; re-en. Sec. 2663, Rev. C. 1907; re-en. Sec. 2246, R. C. M. 1921.

84-4209. (2247) **Rate of taxation where property is taxable.** All rates of tax levy set by the board of county commissioners on the second Monday in August of each year, shall apply permanently to this class of personal property during the ensuing year, and the treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge. Personal property which was in the state and subject to taxation on the first Monday in March of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming or possessing it on the first Monday of March or not; provided, that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes; provided further, that if the rate of taxation fixed for the year in which the collection is made is an increase over the preceding year's levy, then the said board of county commissioners may direct the county treasurer to collect the amount of such increased levy, but shall not be obliged to do so in cases where, in the opinion of the board, the cost of collection would exceed the amount of such increase, and provided further that if the rate fixed for the year in which the collection is made shall be less than the levy for the preceding year, then the person from whom such excess tax was collected may file with the board of county commissioners a duly verified claim for a refund of such excess tax, at any time before the first day of November of the year in which such an excess was collected, and such claim shall be allowed and ordered paid by the board of county commissioners to the amount of such excess.

History: Ap. p. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1933. Cal. Pol. C. Sec. 3823.

Implied Repeal

Chapter 72, Laws of 1937 (53-114 et seq.), relating generally to the registration, licensing and taxation of motor vehicles, and containing a general repealing clause, does not impliedly repeal this section making provision for adjustments so that the tax finally paid shall conform to the rate for the current year, and is applicable to the subject matter of such chapter. (Sections 53-107, 53-114, 53-116, 53-117, 53-118 and 84-406.) Wheir v. Dye, 105 M 347, 359, 73 P 2d 209.

References

Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 39, 81 P 398; Vennekolt v. Lutey, 96 M 72, 74, 28 P 2d 452.

Collateral References

Taxation⊂⇒260, 305, 537.
84 C.J.S. Taxation §§ 316, 355, 634.

84-4210. (2250) **Treasurer's record.** The treasurer must, on or before the first day of December of each year, note on the assessment book, opposite the name of each person from whom taxes have been collected by him in pursuance of such report of the assessor, the amount of taxes received, and the date of the receipt thereof, or in case such taxes have not been collected by him, the reason why such collection was not made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2250, R. C. M. 1921.

Collateral References

Taxation⊂⇒557 (1).
84 C.J.S. Taxation § 664.

84-4211. (2251) **Assessor to note report of property.** The assessor must note on the assessment book opposite the names of each person owning, claiming, or possessing such personal property which may be so re-

ported by him to the treasurer, the fact that such report was made to the treasurer, and the date when the same was so made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R. C. M. 1921.

Collateral References

Taxation⇨411.
84 C.J.S. Taxation § 456.

84-4212. (2252) **Repealed—Chapter 134, Laws of 1947.**

84-4213. (2252.1) **Treasurer's duty to collect road and poor taxes—seizure and sale of property—when road and poor tax to be paid.** The county treasurer must demand payment of poor taxes, as authorized by section 71-106, and road taxes authorized by section 32-201 or section 84-4732, of every person liable therefor whose name does not appear on the assessment lists and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any property owned by such person.

These taxes shall be added upon the assessment lists to other taxes of persons liable therefor, paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes. And all personal property assessed against a person shall be liable for the payment of such taxes.

History: En. Sec. 1, Ch. 168, L. 1935.

Compiler's Note

Section 32-201, referred to in the first paragraph of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sections 32-3601, 32-3605.

84-4214. (2252.2) **Procedure for sale of property.** The procedure for the sale of such property by the county treasurer for such taxes shall be regulated by sections 84-4201 to 84-4211, inclusive.

History: En. Sec. 2, Ch. 168, L. 1935.

84-4215. List of personal property taxes delinquent ten years—list of contractual obligations barred by statute of limitations. It shall be the duty of such county treasurer to prepare in triplicate and submit to the board of county commissioners of his county, on or before the thirty-first day of December, 1949, and thereafter, on or before the first Monday of June in each year, a list of personal property taxes which are not a lien on real estate and which have been delinquent for ten (10) years or more. Said list shall show the following:

1. Name and address of the delinquent taxpayer.
2. Amount of the delinquent tax, plus penalty if any.
3. The year the tax became delinquent.

Every county treasurer shall, within the same time, prepare in triplicate and submit to the board of county commissioners of his county, a list of all contractual obligations owed to or held by his county for seed grain, feed or other relief, the collection of which is barred by the statute of limitations, to wit, section 93-2603. Said list shall show the following:

1. Name and address of the person or persons who entered into the contractual obligation.

2. The name of the contractual obligation, as "seed loan," "feed loan," "promissory note," as the case may be.

3. The date of obligation; date when last payment became due; date of last payment thereon, and the date when the collection of the obligation became barred by said statute of limitations.

History: En. Sec. 1, Ch. 44, L. 1949.

Collateral References

Taxation⊂552½.
84 C.J.S. Taxation § 662.

84-4216. Cancellation of such taxes and obligations—filing of lists. Upon receipt of such list or lists, and within thirty (30) days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon the board of county commissioners shall make its order canceling all such personal property taxes and contractual obligations contained in such list or lists, as corrected, required by this act to be canceled, and spread such order upon its minutes. But such order and minutes need not set forth in full the contents of such list or lists, a proper reference therein for their identification being sufficient; provided, however, that at the time of making such order, the original or ribbon copy of such list or lists, as corrected, shall be filed with and as a part of the records of the board; one legible original carbon copy thereof shall be filed with the county clerk and recorder as a public record, and one legible original carbon copy thereof shall be filed with the county treasurer as a permanent record of his office.

History: En. Sec. 2, Ch. 44, L. 1949.

Collateral References

Taxation⊂552½.
84 C.J.S. Taxation § 662.

84-4217. Adjustment of accounts after cancellation. Upon notification of the above order for cancellation, the county clerk and county treasurer must adjust their taxes receivable accounts to conform to the said order of cancellation.

History: En. Sec. 3, Ch. 44, L. 1949.

CHAPTER 43

COLLECTION OF TAXES BY SUIT

Section 84-4301. Collection of taxes by action.
84-4302. Complaint in action for taxes.

84-4301. (2253) **Collection of taxes by action.** The state auditor may, at any time after a delinquent list has been delivered to a county treasurer, direct such treasurer not to proceed in the collection of any tax on said list amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the county treasurer, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the state auditor a certified copy of the entries upon the delinquent list relative to such tax; and the treasurer, or state auditor, in case the treasurer refuses or neglects for fifteen days after being directed to bring suit for collection by the state auditor, may proceed by civil action in the proper court, and in the name of the state of Montana, to collect such tax and costs.

History: En. Sec. 4020, Pol. C. 1895; re-en. Sec. 2738, Rev. C. 1907; re-en. Sec. 2253, R. C. M. 1921.

References

State ex rel. Spokane & Eastern Trust Co. v. Nicholson, 74 M 346, 352, 240 P 837; Calkins v. Smith, 106 M 453, 457, 78 P 2d 74; Sutter v. Scudder, 110 M 390, 394, 103 P 2d 303; United States v. Christensen, 218 F Supp 722, 724.

Collateral References

51 Am. Jur. 862, Taxation, §§ 984-986.

When statute of limitations commences to run against action to recover tax. 131 ALR 822.

Right to maintain action or proceeding in one state to collect or enforce tax due another state or political subdivision thereof. 165 ALR 796.

84-4302. (2254) **Complaint in action for taxes.** In such action a complaint in the following form is sufficient:

(Title of Court.)

The State of Montana,
vs.
.....
(naming the defendant).

Plaintiff avers that the defendant is indebted to plaintiff in the sum of ..... dollars, state and county taxes for the fiscal year 19....., with ten per cent added for the nonpayment of such taxes, and ..... dollars, costs of collection to date. Plaintiff demands judgment for said several sums, and prays that a writ of attachment may issue in form as prescribed by law.

(Signed by the county treasurer, or state auditor, or his attorney.)

On the filing of such complaint, the clerk must issue a summons and the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil action. If, in such action, the plaintiff recover judgment, there shall be included in such judgment an attorney's fee of ten per cent on the amount of the tax. In such action the certified copy mentioned in the preceding section made by the treasurer and delivered to the state auditor is prima facie evidence that the person against whose property the tax was levied is indebted to the state of Montana in the amount of such tax. In case of payment of any such taxes after suit, as above mentioned, shall have been commenced, or after the recovery of judgment therefor, such payment must be made to the county treasurer of the county in which such taxes are due, whereupon the treasurer, after distributing to the several funds of the county the portions belonging to it, and paying to the state auditor or his attorney the portion received as attorney's fees and other costs, must pay the remainder to the state treasurer, at the times and in the manner prescribed by law for the payment of other state taxes.

History: En. Sec. 4021, Pol. C. 1895; re-en. Sec. 2739, Rev. C. 1907; re-en. Sec. 2254, R. C. M. 1921.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81 (a), Table A.

References

United States v. Christensen, 218 F Supp 722, 724.

Collateral References

Taxation⇐592.
84 C.J.S. Taxation § 710.

CHAPTER 44

SETTLEMENT WITH STATE AUDITOR AND TREASURER

Section 84-4401. Settlement of county treasurer with state treasurer.
84-4402. Report of county clerk to state auditor.
84-4403. State auditor may examine books of any revenue officer.
84-4404. Directing prosecution of delinquent revenue officer for fraudulent or other misconduct.
84-4405. Special counsel may be employed—provision for expenses.

84-4401. (2255) **Settlement of county treasurer with state treasurer.** The county treasurer, between the first and twentieth days of each month, must remit to the state treasurer, all moneys belonging to the state of Montana which were collected by such treasurer during the preceding month. Such remittance shall be accompanied by a detailed report upon such form as the state treasurer may prescribe, and for all such moneys by him collected and not remitted by him to the state treasurer within five days from the time herein required he shall pay interest at the rate of 10% per annum.

History: En. Sec. 3990, Pol. C. 1895; re-en. Sec. 2715, Rev. C. 1907; re-en. Sec. 2255, R. C. M. 1921; amd. Sec. 1, Ch. 47, L. 1925. Cal. Pol. C. Sec 3865.

Collateral References
Taxation⚖912.
85 C.J.S. Taxation § 1060.

84-4402. (2257) **Report of county clerk to state auditor.** The county clerk, between the first and twentieth days of each month, must make a report to the state auditor in such form as the state auditor may prescribe, showing specifically the amount of moneys due the state from each particular source of revenue for the collections of the preceding month.

History: En. Sec. 3992, Pol. C. 1895; re-en. Sec. 2717, Rev. C. 1907; re-en. Sec. 2257, R. C. M. 1921; amd. Sec. 2, Ch. 47, L. 1925. Cal. Pol. C. Sec. 3868.

84-4403. (2265) **State auditor may examine books of any revenue officer.** The state auditor, as well as the state examiner, may examine the books of any officer charged with the collection and receipt of state taxes.

History: En. Sec. 4000, Pol. C. 1895; re-en. Sec. 2725, Rev. C. 1907; re-en. Sec. 2265, R. C. M. 1921. Cal. Pol. Sec. 3877.

84-4404. (2266) **Directing prosecution of delinquent revenue officer for fraudulent or other misconduct.** If, on examination, it is found that any officer has been guilty of defrauding the state of revenue, or has neglected or refused to perform any duty relating to the revenue, the state auditor must direct the attorney general or other counsel to prosecute the delinquent.

History: En. Sec. 4001, Pol. C. 1895; re-en. Sec. 2726, Rev. C. 1907; re-en. Sec. 2266, R. C. M. 1921. Cal. Pol. C. Sec. 3879.

Collateral References
Taxation⚖571.
84 C.J.S. Taxation § 684.

84-4405. (2267) **Special counsel may be employed—provision for expenses.** The state auditor or attorney general may employ other counsel, and the expenses must be audited by the board of examiners and be paid out of the state treasury.

History: En. Sec. 4002, Pol. C. 1895; re-en. Sec. 2727, Rev. C. 1907; re-en. Sec. 2267, R. C. M. 1921. Cal. Pol. C. Sec. 3880.

Collateral References

Criminal Law⇨640.

27 C.J.S. District and Prosecuting Attorneys § 29.

CHAPTER 45

PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

Section 84-4501. Payment of license fees under protest—action to recover.
84-4502. Payment of taxes under protest—action to recover.
84-4503. Assessment for taxation—increase over statement of owner.
84-4504. Other remedies superseded.
84-4505. Injunction does not lie to restrain enforcement of tax.

84-4501. (2409) **Payment of license fees under protest—action to recover.** Whenever any license fee is demanded of any person for the use and benefit of the state of Montana, and the same is deemed unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be deemed unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the tax. The person paying, or his legal representatives, may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the tax to recover the same, without interest; provided, that any action instituted to recover any license paid under protest shall be commenced, and summons and copy of complaint served, within sixty (60) days after the date of payment thereof to the state agency or officer responsible for collecting the tax. If such action be finally decided adversely to the state, the state treasurer shall, upon receiving a copy of the final judgment in said action, refund such license fee to the person in whose favor such judgment is rendered.

History: En. Sec. 1, Ch. 188, L. 1921; re-en. Sec. 2409, R. C. M. 1921; amd. Sec. 1, Ch. 197, L. 1955; amd. Sec. 3, Ch. 126, L. 1963.

Liquor License Refused for Insufficient Tender

It would seem that this section affords the remedy for an applicant for a liquor license which is denied by the state liquor board on the ground that the tendered fee is insufficient; applicant may pay the required fee under protest and then bring an action to recover it back, rather than to bring an action in mandamus to compel the board to issue the license for the fee tendered, the procedure followed in the instant case, wherein the time involved threatened to extend beyond the period for which the license was desired. State ex rel. Putnam v. District Court, 109 M 223, 225, 95 P 2d 441.

Prohibition as Remedy

District court should have denied application for writ of prohibition to restrain board of equalization from enforcing amendments to regulations relating to corporation license tax where tax could be paid under protest and action brought to recover under this section. State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

Collateral References

Licenses⇨34.

53 C.J.S. Licenses § 57.

33 Am. Jur. 396, Licenses, §§ 88, 89.

Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery. 80 ALR 2d 1040.

84-4502. (2269) **Payment of taxes under protest—action to recover.** (1) In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus

taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect the same, specifying the grounds of protest; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, and the state board of equalization, which shall be served with summons and copy of the complaint, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment, or so much thereof as may be deemed unlawful, may be so paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment, or portion thereof, so paid under protest, then such subsequent installment, or portion thereof deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment, or portion thereof, paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be retained in such protest fund until the final determination of any suit or action to recover the same.

(2) If no action is commenced within the time herein specified, or if such action be commenced and finally determined in favor of the county or municipality, or treasurer thereof, the amount of such license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality, or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund the amount of such license or tax, with costs of suit without interest, to the person in whose favor such judgment is rendered; provided, that if such action was commenced for the purpose of recovering the first installment, or any portion thereof, of any such license or tax, and any subsequent installment thereof, has been paid under protest, as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, without interest.

History: Ap. p. Sec. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925; amd. Sec. 1, Ch. 204, L. 1955.

Constitutionality

The 1955 amendment to this section properly included additional requirements for bringing actions based on the payment of taxes under protest and the amending act was not unconstitutional as being in contravention of section 23, article V of the Montana constitution. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 571.

Complaint Insufficient

Taxpayer's complaint to recover excessive taxes paid under protest failed to state a cause of action where it failed to allege application to the county board of equalization for reduction in assessment before resorting to court, or appearance before county board, state board of equalization or anyone charged with the equalization of taxes, and defendant's demurrer should have been sustained. Blair v. Potter, 132 M 176, 315 P 2d 177, 178, 180.

Complaint—Sufficiency

The complaint in an action to recover taxes paid under protest need not allege that suit was brought within the sixty-day period prescribed in this section, it being sufficient if it be made to appear affirmatively that it was so brought, by recitals showing when the tax was paid and when the complaint was filed. Belknap Realty Co. v. Simineo, 67 M 359, 365, 215 P 659.

The complaint in an action brought under this section to recover taxes unlawfully paid under protest, setting forth the character of the lands in question, refusal of the assessor to take them into consideration, that the valuations placed on them were disproportionate to others of like character, that all the facts relied upon were known to both county and state boards of equalization, that no evidence contradictory of that of plaintiff was introduced before either board, and that both disregarded the evidence and acted arbitrarily in refusing him relief, was not vulnerable to a general demurrer as alleging mere conclusions. Johnson v. Johnson, 92 M 512, 518, 15 P 2d 842.

Consent Judgment

The boards of county commissioners have no power, authority or jurisdiction under the constitution nor statutes to reduce, compromise, remit, release, cancel, diminish or extinguish any state tax, obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined and fixed by the state board of equalization. The county attorney does not have the power, where an action for refund of tax has been instituted under this section, to consent to a judgment, based upon a resolution and stipulation which extinguished the assessed tax for the taxpayer for the year in question, hence any judgment based on such stipulation is void and erroneous. Carlson v. Flathead County, 130 M 36, 293 P 2d 279. (Dissenting opinion, 130 M 36, 293 P 2d 279, 286.)

This section requires the court to determine the matter in accordance with the facts presented. The court does not have power to enter a judgment upon a stipulation of the county attorney and the attorney for the taxpayer, where the county attorney did not have the power to so stipulate. Carlson v. Flathead County, 130 M 36, 293 P 2d 279, 285. (Dissenting opinion, 130 M 36, 293 P 2d 279, 286.)

Court Will Not Substitute Its Judgment for That of Tax Officials

In an action to recover taxes paid under protest, under complaint alleging overvaluation, and that acts of defendants assessor and county and state boards of equalization were fraudulent in law and showed mistake so gross as to be inconsistent with reasonable judgment, and were tyrannical and capricious, the supreme court will not substitute its judgment for that of taxing officials, and will not notice an alleged overvaluation honestly made, but will grant relief on overvaluation only where it is so gross as to be inconsistent with the exercise of honest judgment. Investors Security Co. v. Moore, 113 M 400, 405, 127 P 2d 225.

Exclusive Remedies

The legal remedy by action to recover back a tax paid under protest on a levy deemed unlawful, provided by this section, when read in connection with section 84-4504, which provides that such action shall supersede all other remedies which might be invoked to prevent the collection of taxes alleged to be irregularly levied or demanded, and the equitable one, by injunction in the instances enumerated in section 84-4505, are exclusive. Where a tax is wholly illegal or the legal and illegal portions thereof appear to be inseparable, either remedy is available. To the extent the above holding with reference to the legal remedy conflicts with section 84-4176, the latter section must be considered repealed. First Nat. Bank of Plains v. Sanders County, 85 M 450, 459 et seq., 279 P 247, explained in 105 M 577, 581, 74 P 2d 427. See also First Nat. Bank of Lima v. Beaverhead County, 88 M 577, 579, 294 P 956, and Williams v. Harvey, 91 M 168, 171, 6 P 2d 418.

This section, under which a taxpayer may, if he deems a tax "unlawful," pay it under protest and bring a direct action for its recovery, while exclusive except

in those cases provided for in section 84-4505, where injunction lies for illegality of the tax or the property is exempt, permits an action for the recovery of any tax, or any part thereof, which could not lawfully be exacted, and is not open to the construction that the action provided for is confined to one attacking a tax on the ground that it was illegally laid. Johnson v. Johnson, 92 M 512, 518, 15 P 2d 842.

Filing of Claim Unnecessary

Under this section, one who pays taxes under protest is not required to file a claim with the board of county commissioners for the amount paid, before commencing an action to recover them. Story v. Dixson, 64 M 206, 210, 211, 208 P 592.

Injunction

An injunction lies to restrain the collection of a tax wholly void. Barnard Realty Co. v. City of Butte, 50 M 159, 167, 168, 145 P 946.

Interest Not Recoverable

Section 2271, R. C. M. 1921 (omitted), provides that where a taxpayer has judgment in his action to recover taxes paid under protest he shall be entitled to interest thereon. This section provides that the successful plaintiff shall have judgment without interest. The general repealing clause declares that all acts and parts of acts in conflict with the amendatory act are repealed. The provision for interest in section 2271 (omitted) and the one in this section for no interest are so repugnant to each other that they cannot be reconciled, and therefore the latter act is controlling in this respect. Fulton Oil Co. v. Toole County, 86 M 367, 373, 283 P 769.

The contention of successful plaintiff, in an action to recover taxes paid under protest, that under section 2271, R. C. M. 1921 (omitted), he is still entitled to interest on the judgment in his favor and that the provision of this section, in providing that his recovery shall be "with costs of suit without interest" means that the interest thus mentioned applies only to the costs, may not be sustained. Fulton Oil Co. v. Toole County, 86 M 367, 373, 283 P 769.

Interest Provision Not Applicable to Action under Section 84-4176

The provisions of this section, that when taxes paid under protest may be recovered, recovery shall be had without interest, have no application to an action based on section 84-4176, authorizing refund of a tax "paid more than once." In such an action plaintiff is entitled to interest on the unlawful tax from the date of payment, even though plaintiff, to avoid the imputation that the payment made was voluntary, made it under protest. Williams v. Harvey, 91 M 168, 171 et seq., 6 P 2d 418.

Intervention by State and State Board of Equalization

In an action by a taxpayer under this section against the county for a refund of taxes, the state and the state board of equalization have an interest in the subject matter of the litigation so as to enable them to intervene in the action, not only because part of the tax collected was a state levy but also because the determinative questions raised are of vital interest and concern as they pertain to the tax laws, the procedure thereto, and the public fiscal policy of the sovereign state. Carlson v. Flathead County, 130 M 24, 293 P 2d 273, 275. (Dissenting opinion, 130 M 24, 293 P 2d 273, 276.)

Judgment

Where plaintiff, in an action to recover taxes unlawfully paid, asks judgment for the full amount of the tax paid under protest, the just tax on the property should be upheld, if possible, he being entitled to recover only that which was unlawfully collected, i. e., the excess. Johnson v. Johnson, 92 M 512, 518, 15 P 2d 842.

Speedy and Adequate Remedy

If a person can show an unlawful assessment, he has a cause of action under this section, and it is in effect a proceeding to review the decisions of the county and state boards of equalization. Since this is a speedy and adequate remedy in the ordinary course of the law, a writ of mandate should not be issued against the state board of equalization. (This case expressly overrules Corcoran v. State Board of Equalization, 116 M 499, 154 P 2d 795.) State ex rel. Goza v. District Court, 125 M 296, 234 P 2d 463, 465.

Sufficiency of Evidence

An action brought under this section to recover taxes deemed to have been unlawfully collected, is in effect a proceeding to review the decisions of the county and state boards of equalization; in such action the taxpayer is entitled to show what was before the boards; it in effect challenges the sufficiency of the evidence to warrant the orders of the boards denying him relief, and the court must determine, as a matter of law, whether or not the evidence presented to the boards was sufficient to sustain their orders. Johnson v. Johnson, 92 M 512, 518, 15 P 2d 842.

Summons In Action for Refund

This section grants the taxpayer a choice of bringing the action against the

officer to whom the tax was paid or against the county in whose behalf the tax was collected and the state board of equalization and, where both the county treasurer and the state board of equalization were named as parties defendant, the fact that the service of summons on the board was properly quashed did not justify dismissal of the action against the county treasurer. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 572.

Taxes Paid without Protest by Indians —Recovery by Federal Government

Where patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians, in paying tax, had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. Glacier County v. United States, 99 F 2d 733, 735.

Time Limitations

Whenever a statute grants a right which did not exist at common law, and prescribes the time within which the right must be exercised, the limitation thus imposed does not affect the remedy merely, but is of the essence of the right itself, and one who seeks to enforce such right must show affirmatively that he has brought his action within the time fixed by the statute; and if he fails in this regard, he fails to disclose any right to relief under the statute. Dolenty v. Broadwater County, 45 M 261, 267, 122 P 919.

The words "and summons served," inserted by the 1955 amendment made an additional condition to be fulfilled by taxpayers bringing an action to recover taxes paid under protest and the sixty-day limitation applies to both commencing the action and serving the summons. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 571.

Townsite Assessment

If the owner of the surface of an unpatented mining claim objects to its assessment for townsite purposes, he has a remedy by paying the taxes under protest, and then suing for their recovery, under section 84-4504, in action at law, and the remedy thus provided is made, by said section 84-4504, to supersede all others. Cobban v. Meagher, 42 M 399, 410, 113 P 290.

Unauthorized Demands

A statute, providing for payment of "taxes, licenses, and other demands for public revenue," under protest, is inapplicable to unauthorized demands by the state auditor. Cunningham v. Northwestern Improvement Co., 44 M 180, 218, 119 P 554.

Unlawful License Fee

An action to recover an unlawful license fee, exacted by a city ordinance, and paid under protest, was held to be properly brought under this section before its amendment in 1905, and the plaintiff was not required to resort to the remedy given under section 84-4505. Reilly v. Hatheway, 46 M 1, 11, 125 P 417.

Void Assessment

This section, being construed with section 84-4504, is not restricted to cases brought where an assessment was void, notwithstanding the provisions of section 84-4505. Western Ranches v. Custer County, 28 M 278, 282, 283, 72 P 659.

References

Montana Ore Purchasing Co. v. Maher, 32 M 480, 490, 81 P 13; Hensley v. City of Butte, 33 M 206, 210, 83 P 481; Hill v. County of Lewis and Clark, 54 M 479, 485, 171 P 929; Read v. Lewis and Clark County, 55 M 412, 414, 178 P 177; State v. Silver Bow Refining Co., 83 M 380, 387, 272 P 684; Chicago, Milwaukee, St. Paul & Pacific R. R. Co. v. Fallon County, 95 M 568, 587, 28 P 2d 462; Christofferson v. Chouteau County, 105 M 577, 581, 74 P 2d 427; International Business Mach. Corp. v. Lewis and Clark County, 111 M 384, 387, 112 P 2d 477; First Nat. Bank v. Bergan, 119 M 1, 169 P 2d 233, 235, 165 ALR 1244; State ex rel. Niewoehner v. Lutey, 126 M 152, 245 P 2d 1042, 1043; Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 504.

Collateral References

Taxation⇐543 (1-9).

84 C.J.S. Taxation § 639.

51 Am. Jur. 1005, Taxation, § 1167 et seq.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Permissive or mandatory character of legislation providing for refund of taxes illegally assessed or collected. 103 ALR 817.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Assignability of claim for tax refund, and rights of assignee in respect thereof. 134 ALR 1202.

DECISIONS UNDER FORMER LAW

Time Limitations

The provisions of this section, as amended in 1909, that an action to recover taxes paid under protest must be commenced within sixty days after the thirtieth day of November of the year in which taxes are paid, applies generally to any action instituted to recover any tax paid under protest. Apparently the legislature assumed that taxes might be paid under protest and contested for reasons other than those referred to in section 84-4502, and it was for the purpose of covering such cases that the amendment to this section was made, and a uniform rule established covering all causes of action to recover taxes paid under protest. Dolenty v. Broadwater County, 45 M 261, 267, 122 P 919.

If money paid under protest upon a special improvement assessment is a "tax, license, or other demand for public revenue," within the meaning of this section, suit to recover same is barred sixty days after November 30th of the year in which the tax was paid. If, however, money so paid is not such a "tax, license, or other demand for revenue," it forms the basis of a mere demand against the city, not suable until after presentation to and disallowance by the city council. Leggat v. City of Butte, 54 M 137, 140, 168 P 38, distinguished in 57 M 407, 409, 188 P 897.

84-4503. (2270) **Assessment for taxation—increase over statement of owner.** Whenever any person has delivered to the assessor a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the assessor shall increase such estimated value, or add other property to such assessment list, he shall, at least ten days prior to the meeting of the county board of equalization, give to such person written notice of such change which notice shall be substantially in the following form:

(Date).....

Mr. .....

A change has been made in your assessment list as follows:

(Set out and describe specifically changes made in list.)

.....

Assessor of ..... County, Montana.

Such person may then appear before the county board of equalization and contest the same; and if the assessment of any such person has been added to or changed, either by the assessor or by the county board of equalization, and such person has not been notified thereof and given an opportunity to contest the same before the county board of equalization, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in section 84-4502. When any person has appeared before the county board of equalization and has contested the increase in the estimated value of his property, or the addition of other property to his assessment list, and has appealed to the state board of equalization from any action or decision with reference thereto by the county board of equalization and such person is aggrieved at the final action of the state board of equalization in making or allowing such increase or addition, he may pay the tax on such increase or addition or the installments thereof if payable in installments, under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to

recover such tax, or installments, and in such action contest and litigate the payment of such taxes on such increased value or added property, on the same grounds and for the same reasons that he has contested the same before the county and state boards of equalization, and for no other reasons and on no other grounds; provided, that all of the provisions of section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925.

NOTE.—In International Business Mach. Corp. v. Lewis and Clark County, 111 M 384, 393, 112 P 2d 477, the portion of the above section which purported to authorize the district court to act as an assessing tribunal was held unconstitutional and is therefore omitted from this code.

Application of Section

This section applies only to actions brought to recover taxes paid under protest for any of the reasons therein mentioned. Dolenty v. Broadwater County, 45 M 261, 265, 122 P 919.

Coal Mining Claims

Where the assessor had correctly assessed coal mining claims at $20 an acre agreeably to the constitutional command, as indicated on the blank mailed to their owner, a coal mining company, which returned it claiming that it could only be assessed on its right of entry, failure of the assessor to give the company an opportunity to appear before the county board of equalization and be heard on its claim of overtaxation (this section) could not have resulted in any change in the assessment and, therefore, such failure could not be urged against the legality of the assessment, the law not requiring idle acts. Superior Coal Co. v. Musselshell County, 98 M 501, 527, 41 P 2d 14.

Existence of Controversy

The provision found in this section, to the effect that if the assessment has been added to or changed either by the assessor or by the county board of equalization, etc., is, by its terms, available only to the "person who had delivered to the assessor a sworn statement of his property subject to taxation" with "the estimated value" thereof. This means all of his taxable property, according to his best knowledge and belief, and the fact that, notwithstanding such list, the assessor or board may increase the value or add other property implies that an honest controversy must exist between the public and the taxpayer as to what property should have been taxed, or what value should have been placed upon it. Hill v. County of Lewis and Clark, 54 M 479, 485, 486, 171 P 929.

Injunction

Where the taxing authorities levy a tax not authorized by law or upon property not subject to be taxed, their action is without jurisdiction and wholly void, and the remedy by injunction is available. The right of the owner of property to relief by injunction is not in anywise affected by his failure, either upon notice by the assessor or by the board itself, to make timely objection. The assessment being wholly illegal, because without authority, its validity may be questioned by any available method. Barnard Realty Co. v. City of Butte, 50 M 159, 167, 145 P 946.

Sole Remedy for Overvaluation

This section affords a taxpayer a remedy when the assessor makes an arbitrary and unfair increase in valuation and mandamus is not available. State ex rel. Niewoehner v. Lutey, 126 M 152, 245 P 2d 1042.

Where a person is liable to taxation for personal and real property, his sole remedy for an overvaluation and overtaxation is by the statutory procedure of appearing before the proper taxing boards in the first instance. Blair v. Potter, 132 M 176, 315 P 2d 177, 181.

References

Merges v. Altenbrand, 45 M 355, 364, 123 P 21; Leggat v. City of Butte, 54 M 137, 139, 168 P 38; Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 186 P 332; Belknap Realty Co. v. Simineo, 67 M 359, 365, 215 P 659; First Nat. Bank of Plains v. Sanders County, 85 M 450, 458, 279 P 247; Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 504.

Collateral References

Taxation⇨352, 542, 543 (1-9).
84 C.J.S. Taxation §§ 410, 638, 639.

DECISIONS UNDER FORMER LAW

Unconstitutional Only as to Authorizing District Court to Act as a Tax Assessing Tribunal

That part of this section (omitted from 1947 Revised Code) authorizing action to recover taxes paid under protest on ground of overvaluation of property with trial by jury after the state board of equalization has refused to grant relief is in conflict with section 1, article IV of the state constitution, relating to the powers of the three departments of state government, in that it attempts to impose upon the judiciary, functions in fact-finding matters that properly belong to another department of state government. International Business Mach. Corp. v. Lewis and Clark County, 111 M 384, 390, 112 P 2d 477.

84-4504. (2272) **Other remedies superseded.** The remedy hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the remedy hereby provided is deemed by the court to be inadequate.

History: En. Sec. 4026, Pol. C. 1895; re-en. Sec. 2745, Rev. C. 1907; re-en. Sec. 2272, R. C. M. 1921.

Irregularities in Tax Sale

The publication of the notice of a tax sale three weeks prior to the sale, when the statute required four weeks, does not render the taxes illegal, and authorize the enjoining of the collection of such tax. Nor does the fact that the treasurer intends to violate certain sections of the law, by exposing for sale, for the delinquent taxes of one year a part of the lands purchased by the county at the tax sales of the preceding year, and yet unredeemed, entitle the owner of the equity of redemption to an injunction, since this section provides that the remedy before the board of equalization shall supersede the remedy of injunction, etc., except in those unusual cases where the remedy thereby provided is deemed by the court inadequate. Cobban v. Hinds, 23 M 338, 350, 59 P 1.

Limits Wherein Remedy Exclusive

The phrase "irregularly levied or demanded" was used by the legislature advisedly, and as prescribing the limits wherein the statutory remedy is exclusive, as distinguished from those cases of illegal taxes the collection of which may be restrained by injunction. Montana Ore Purchasing Co. v. Maher, 32 M 480, 490, 81 P 13.

Mandamus Unavailable

Where the county assessor refused to enter the valuation filed by a person and increased the valuation, the writ of mandamus is not available to the person since the statutory remedy in section 84-4503 is exclusive in the absence of a showing that the remedy provided is inadequate. State ex rel. Niewoehner v. Lutey, 126 M 152, 245 P 2d 1042, 1043.

References

Western Ranches v. Custer County, 28 M 278, 282, 72 P 659; Hensley v. City of Butte, 33 M 206, 210, 83 P 481; Cobban v. Meagher, 42 M 399, 410, 113 P 290; Barnard Realty Co. v. City of Butte, 50 M 159, 167, 145 P 946; State v. Silver Bow Refining Co., 83 M 380, 387, 272 P 684; First Nat. Bank of Plains v. Sanders County, 85 M 450, 458, 279 P 247; Williams v. Harvey, 91 M 168, 171, 6 P 2d 418; Christofferson v. Chouteau County, 105 M 577, 581, 74 P 2d 427; Blair v. Potter, 132 M 176, 315 P 2d 177, 180.

84-4505. (2268) **Injunction does not lie to restrain enforcement of tax.** No injunction must be granted by any court or judge to restrain the collection of any tax or any part thereof, nor to restrain the sale of any property for the nonpayment of taxes, except:

1. Where the tax, or the part thereof sought to be enjoined, is illegal, or is not authorized by law. If the payment of a part of a tax is sought to be enjoined, the other part must be paid before an action can be commenced.

2. Where the property is exempt from taxation.

History: En. Sec. 204, p. 128, L. 1891; re-en. Sec. 4023, Pol. C. 1895; re-en. Sec. 2741, Rev. C. 1907; re-en. Sec. 2268, R. C. M. 1921.

Exclusive Remedies

The legal remedy, by action to recover back a tax paid under protest on a levy deemed unlawful, provided by section 84-4502, when read in connection with section 84-4504, which provides that such action shall supersede all other remedies which might be invoked to prevent the collection of taxes alleged to be irregularly levied or demanded, and the equitable one, by injunction in the instances enumerated in this section, are exclusive. Where a tax is wholly illegal or the legal and illegal portions thereof appear to be inseparable, either remedy is available; and to the extent the above holding with reference to the legal remedy conflicts with section 84-4176, the latter section must be considered repealed. First Nat. Bank of Plains v. Sanders County, 85 M 450, 463, 279 P 247, explained in 105 M 577, 581, 74 P 2d 427. See also First Nat. Bank of Lima v. Beaverhead County, 88 M 577, 579, 294 P 956, and Williams v. Harvey, 91 M 168, 171, 6 P 2d 418.

Section 84-4502, under which a taxpayer may, if he deems a tax "unlawful," pay it under protest and bring a direct action for its recovery, while exclusive except in those cases provided for in this section where injunction lies for illegality of the tax or the property is exempt, permits an action for the recovery of any tax, or any part thereof, which could not lawfully be exacted, and is not open to the construction that the action provided for is confined to one attacking a tax on the ground that is was illegally laid. Johnson v. Johnson, 92 M 512, 519, 15 P 2d 842.

In action to enjoin collection of a tax levy claimed to be illegal, defendants' contention that plaintiffs' remedy was to pay the tax under protest and sue for its recovery was incorrect, since such is not the exclusive remedy where the levy is illegal. Rogge v. Petroleum County, 107 M 36, 47, 80 P 2d 380.

When Injunction Does Lie

Injunction will lie if the action of the assessor or board of equalization was such that the tax complained of is manifestly void under any circumstances; but if the error complained of is only an irregularity on the part of the assessor, board of equalization, or treasurer, or where the tax is not necessarily void under all circumstances, the remedy of payment under protest and an action to recover back is exclusive, except in the unusual cases mentioned in section 84-4504. Montana Ore Purchasing Co. v. Maher, 32 M 480, 490, 81 P 13; Hensley v. City of Butte, 33 M 206, 211, 83 P 481, distinguished in 34 M 165, 168, 85 P 882; Cobban v. Meagher, 42 M 399, 411, 113 P 290; Barnard Realty Co. v. City of Butte, 50 M 159, 167, 145 P 946.

This section, by necessary implication, provides a remedy by injunction where the tax demanded is illegal or not authorized by law. Cunningham v. Northwestern Improvement Co., 44 M 180, 218, 119 P 554.

Where a portion of an assessment made in a lump sum to plaintiff railway company was legal and a portion illegal, and the company was unable to ascertain and pay that which was legal, the remedy by injunction to restrain the threatened issuance of a tax deed was available to it. Northern Pacific Ry. Co. v. Musselshell County, 54 M 96, 108, 109, 169 P 53.

An action to enjoin collection of illegal tax could be maintained even though taxpayer might have paid tax under protest and sued for its recovery. First Nat. Bank v. Bergan, 119 M 1, 169 P 2d 233, 235, 165 ALR 1244.

When Injunction Does Not Lie

This section prohibits courts and judges from enjoining the sale of the property for nonpayment of any tax, except in those instances where the tax is illegal, or not authorized by law, or where the property is exempt from taxation, and provides the means and remedies whereby the rights of persons who deem the taxes irregularly or improperly demanded of the owners, or sought to be enforced, against the property, may be guarded and protected. Cobban v. Hinds, 23 M 338, 349, 350, 59 P 1, explained in 23 M 558, 563, 59 P 916. See Montana Ore Purchasing Co. v. Maher, 32 M 480, 490, 491, 81 P 13; Hensley v. City of Butte, 33 M 206, 211, 83 P 481; Cobban v. Meagher, 42 M 399, 411, 113 P 290, and Barnard Realty Co. v. City of Butte, 50 M 159, 167, 168, 145 P 946.

The court may not restrain the collection of a tax levied on the surface of an unpatented mining claim having a separate and independent value because of its use for other than mining purposes, on the ground that the assessor failed to set forth in the assessment the fact that the surface ground was assessed for other than mining purposes, but the remedy is by an action at law under section 84-4502 to recover the taxes paid under protest. Cobban v. Meagher, 42 M 399, 410, 411, 113 P 290.

Taxpayers were not entitled to an injunction under this section against county assessor and county commissioners to prohibit use of valuations furnished by reclassification office under sections 84-429.7 through 84-429.13 in making up 1965 tax assessment roll, where there was no showing of irreparable injury and the law could furnish all relief to which com-

plainants were entitled. State ex rel. Keast v. Krieg, — M —, 402 P 2d 405, 409.

References

Barrett v. Shannon, 19 M 397, 400, 48 P 746; Deloughrey v. Hinds, 23 M 260, 272, 58 P 709; Western Ranches v. Custer County, 28 M 278, 282, 72 P 659; Reilly v. Hatheway, 46 M 1, 11, 125 P 417; State v. Silver Bow Refining Co., 83 M 380, 387, 272 P 684; Christofferson v. Chouteau County, 105 M 577, 581, 74 P 2d 427; State ex rel. Goza v. District Court, 125 M 296, 234 P 2d 463, 465.

Collateral References

Taxation⇐608 (1), (2), 652.

84 C.J.S. Taxation § 719; 85 C.J.S. Taxation § 789.

CHAPTER 46

BANKS—TAXATION

Section 84-4601. National banks out of state.
84-4602. Assessment of stock in banking corporations.
84-4603. Payment of taxes—entry of assessment.
84-4604. Statements to be furnished by officers.
84-4605. Taxation of banks and shares of stock in.

84-4601. (2063) **National banks out of state.** The shares of the capital stock of banks organized under the laws of the United States, not located in this state, owned by residents of this state, are not subject to taxation.

History: En. Sec. 9, p. 76, L. 1891; re-en. Sec. 3694, Pol. C. 1895; re-en. Sec. 2506, Rev. C. 1907; re-en. Sec. 2063, R. C. M. 1921.

References

First Nat. Bank of Billings v. Province, 20 M 374, 377, 51 P 821; Daly Bank and Trust Co. of Butte v. Board of County Commrs. of Silver Bow County, 33 M 101, 103, 81 P 950; Montana Nat. Bank of Billings v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876.

Collateral References

Taxation⇐11.

84 C.J.S. Taxation § 153.

51 Am. Jur. 309, Taxation, § 254 et seq.

84-4602. (2064) **Assessment of stock in banking corporations.** All shares of stock in national banks existing by authority of the United States and located and doing business within this state, shall be assessed to the owners thereof in the cities, towns, or places where such banks are located, and not elsewhere, in the assessment of all state, county, school districts, and municipal taxes, imposed and levied in such place whether or not the owner of such stock is a resident of such city, town or place.

History En. Sec. 1, Ch. 81, L. 1921; re-en. Sec. 2064, R. C. M. 1921.

NOTE.—Prior acts were sections 2503 to 2505, Revised Codes, 1907, and chapter 31, Laws of 1915.

Cross-References

Bank ceasing business, how taxed, sec. 5-1022.

Building and loan associations, taxation, sec. 7-122.

Ad Valorem Tax Not Repealed by Income Tax on Dividends

Property or ad valorem tax could not be recovered on the theory that national bank shares had been taxed under the income tax law, sections 84-4901 et seq., and that the legislature had impliedly repealed the ad valorem method of taxing them and substituted the tax on dividends, as no such substitution was made or intended. The ad valorem tax was not repealed by income tax on dividends. Johnson v. Meagher County, 116 M 565, 568, 155 P 2d 750, appeal dismissed 326 U S 679, 90 L Ed 397, 66 S Ct 31.

Discrimination Prohibited

Under section 5219, United States Revised Statutes, shares of stock of national banks may be taxed by the state provided no unfriendly discrimination is made against such shares in favor of moneyed capital in the hands of individual citizens of the state, moneyed capital meaning capital employed in competition with the business of national banks. First Nat. Bank of Glendive v. County of Dawson, 66 M 321, 330, 213 P 1097.

References

Union Bank & Trust Co. v. Moore, 62 M 132, 135, 204 P 361; Montana Nat. Bank of Billings v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876.

Collateral References

Taxation⇐127, 281.
84 C.J.S. Taxation §§ 145, 336.
51 Am. Jur. 315, Taxation, § 262.

84-4603. (2065) **Payment of taxes—entry of assessment.** Every national bank shall pay to the person authorized to collect taxes in the state, county, city, town, or place in which such bank is located, at the time of each year when other taxes become due, the amount of the tax upon the shares in such bank. Said banks shall be liable for the payment of the said tax, and if the same is not paid on or before the thirtieth day of November of each year at six o'clock p. m., the said tax shall become delinquent, and shall be collected in the same manner and be subject to the same laws as all other delinquent taxes.

For convenience, the assessment of shares of stock in national banks, and herein referred to, shall be entered on the personal property assessment list under the name of the bank, and in such statement the names of the holders of bank stock shall be set forth, and the shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the name and against the holder of bank stock individually.

History: En. Sec. 2, Ch. 81, L. 1921; re-en. Sec. 2065, R. C. M. 1921.

Time of Assessment

The shares of a bank are not assessed until the statements are furnished by the banks five days after demand, or assessment by assessor in case of failure of banks to furnish statements. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 907.

References

First Nat. Bank of Glendive v. County of Dawson, 66 M 321, 330, 213 P 1097; Union Bank & Trust Co. v. Moore, 62 M 132, 135, 204 P 361; Montana Nat. Bank of Billings v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876.

Collateral References

Taxation⇐386 (1), 522.
84 C.J.S. Taxation §§ 424, 613.

84-4604. (2066) **Statements to be furnished by officers.** The cashier of every national bank shall make and deliver to the assessor of the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business the day next preceding the first Monday in March, in each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be assessed. If said cashier fails to make such statement as required, the assessor shall forthwith obtain said information from the officers of the bank and for this purpose he shall have access to the books of the bank, and the assessor shall therefor make an assessment of such stock, which shall be as fair and equitable as he may be able to make from the best information available, or he may adopt the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports.

History: En. Sec. 3, Ch. 81, L. 1921; re-en. Sec. 2066, R. C. M. 1921.

References

First Nat. Bank of Glendive v. County of Dawson, 66 M 321, 330, 213 P 1097;

Union Bank & Trust Co. v. Moore, 62 M 132, 135, 204 P 361; Montana Nat. Bank of Billings v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876; Merchants' Nat. Bank of Glendive v. Dawson County, 93 M 310, 316 et seq., 19 P 2d 892; Miners Nat. Bank of Butte v. County of Silver Bow, 116 M 31, 34, 148 P 2d 538.

Collateral References

Taxation⇐386 (1).
84 C.J.S. Taxation § 424.

84-4605. (2067) **Taxation of banks and shares of stock in.** (1) Every state bank or banking corporation located and doing business in this state, and every private banker doing business in this state, shall be taxable upon the value of all real estate and personal property owned by such bank, banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by section 84-301; and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the assessor of the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such bank, banking corporation or private banker. The assessor shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such bank, banking corporation or private banker to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

(2) All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is assessable and taxable to such bank or banking corporation in this state, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place.

(3) The cashier or secretary of any such bank or banking corporation shall furnish to the assessor, upon his demand therefor, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the assessor may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of

such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.

History: En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1927.

Constitutionality

Chapter 64, Laws of 1929 (84-303 to 84-308) and this section, so far as they relate to taxation of moneyed capital and shares of stock of state banks, in requiring reports for purposes of assessment by a banking corporation though none is required from owners of competing capital, are not special laws in contravention of section 26, article V of the constitution, the taxing officers under other provisions of law having authority to call for such reports. Bank of Miles City v. Custer County, 93 M 291, 309 et seq., 19 P 2d 885.

Restriction

Corporate shares in state banks held by individuals are taxable under this section to the extent they have a value beyond that of the taxable property of the bank. State ex rel. Conrad Banking Corp. of Great Falls v. Mady, 83 M 418, 424, 272 P 691.

References

Union Bank & Trust Co. v. Moore, 62 M 132, 135, 204 P 361; First Nat. Bank of Glendive v. County of Dawson, 66 M 321, 330, 213 P 1097; Montana Nat. Bank of Billings v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876; Merchants' Nat. Bank of Glendive v. Dawson County, 93 M 310, 329, 19 P 2d 892.

Collateral References

Taxation⇐126, 386 (1), (2), 523.
84 C.J.S. Taxation §§ 143, 424, 615.
51 Am. Jur. 819, Taxation, § 929 et seq.

Deduction on account of exempt securities in taxation of corporations or their shareholders. 57 ALR 899 and 65 ALR 878.

CHAPTER 47

CITIES AND TOWNS—TAXATION AND LICENSE

Section 84-4701. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.
84-4701.1. All-purpose exclusive levy authorized.
84-4701.2. Maximum rate of all-purpose exclusive levy.
84-4701.3. Allocation of all-purpose levy.
84-4701.4. All-purpose levy election binding for year—abandonment in succeeding years.
84-4701.5. Certification of all-purpose levy to county officers.
84-4702. Special tax by cities and towns to provide postwar funds authorized.
84-4703. Transfer of unexpended funds in street fund.
84-4704. Expenditures from special fund, when—purpose—approval of electors, when.
84-4705. Budget required.
84-4706. Cities and towns may raise money by taxation in excess of levy now permitted, how.
84-4707. Notice of election.
84-4708. Submission of question to state object of levy—use of funds—balance.

84-4709. Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election.
84-4710. Registration of electors.
84-4711. Qualifications for voting on creation or increasing municipal or school indebtedness.
84-4712. Special taxes and assessments.
84-4713. Taxes in cities and towns which have exceeded the constitutional limit of indebtedness.
84-4714. City authorized to levy special taxes.
84-4715. Annual tax—equalization and collection.
84-4716. Levy, etc., to be made under this chapter.
84-4717. Basis of taxation.
84-4718. Duty of county assessor.
84-4719. Copies of assessment books to be furnished cities and towns.
84-4720. Charge of assessor for making copies.
84-4721. Equalization of taxes.
84-4722. Affidavit of aggrieved party.
84-4723. Preparation of assessment book.
84-4724. Book to be furnished by city.
84-4725. Delivery of book to city treasurer.
84-4726. Collection of taxes—delinquent taxes.
84-4727. Delinquent tax—sales of property taxed or specially assessed by cities or towns.
84-4728. Collection of delinquent taxes by cities authorized.
84-4729. Fixing amount of tax levy—certification to county or city clerk.
84-4730. Fiscal year.
84-4731. Annual appropriation—manner and time of making.
84-4732. Road poll tax.
84-4733. List of persons liable for poll tax.
84-4734. Powers of city clerk and treasurer.
84-4735. Poll tax—how expended.
84-4736. Work on the streets, etc.
84-4737. License tax may be levied.

84-4701. (5194) **Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.** The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities and towns must not exceed two (2%) per centum on the per centum of the assessed value of the taxable property of the city or town; and the council or commission in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of procuring, equipping and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums and combinations thereof, the council or commission in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding six (6) mills on the dollar on the per centum of the assessed value of the taxable property of the city or town.

History: Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951. Cal. Pol. C. Sec. 4371.

Cross-References

Airports, sec. 1-804.

Bond issues, levy for, sec. 11-2322.

Cemetery districts, levy for, sec. 9-209.

City budget, levy for, sec. 11-1406.

Council may levy and collect, sec. 11-902.

Emergency expenditures, levy for, sec. 11-1409.

Fire districts, levy for support of, sec. 11-2008.

Firemen's disability fund, levy, sec. 11-1912.

Free public libraries, levy for, sec. 44-301.

Garbage removal from city streets, levy for, sec. 11-909.

Police reserves, levy for, sec. 11-1823.

Smoke nuisance abatement bonds, levy, sec. 11-2509.

Special tax levies, authority, sec. 84-4714.

Trade stimulators, tax, sec. 84-5718.

Volunteer fire departments, levy for, sec. 11-1909.

Retirement of Bonded Indebtedness

Contention by defendant town that since it was levying the maximum amount of taxes allowable under this section, it could not levy a tax each year to pay interest on water bonds and create a sinking fund, was without merit, the levy under this section being for general, municipal or administrative purposes, while under section 11-2303, a special tax may be levied in addition to that provided for herein to retire bonded indebtedness and interest on such bonds. State ex rel. Mueller v. Todd, 114 M 35, 42, 132 P 2d 154.

References

Northern Pacific Ry. Co. v. Dunham, 108 M 338, 344, 90 P 2d 506; Hill v. Billings, 134 M 282, 328 P 2d 1112, 1116.

Collateral References

Municipal Corporations⇐956 (2).

64 C.J.S. Municipal Corporations § 1989.

38 Am. Jur. 72, Municipal Corporations, §§ 385, 386.

DECISIONS UNDER FORMER LAW

Conflict of Laws

Prior to amendments of 1923 and 1925, this section provided that towns may levy taxes for general municipal purposes, not to exceed ten mills on the assessed value of their taxable property. Under sections 84-301 and 84-302, the "taxable value" of property of different classes was fixed at a certain percentage of the assessable value, that of real property being fixed at thirty per cent of its assessed value. Defendant town assumed to levy a tax of twenty mills, contending that on the value as fixed by sections 84-301 and 84-302, the tax so imposed did not exceed ten mills on the assessed value as fixed by this section, prior to 1923 and 1925 amendments. This section, prior to 1923 and 1925 amendments, and sections 84-301 and 84-302 being in irreconcilable conflict, and such sections (84-301 and 84-302) being the later enactments, are controlling to the extent of the repugnancy, and the taxable value as fixed by those sections, and not the assessed value fixed by this section, prior to 1923 and 1925 amendments, is the standard prescribed for computing taxes. Tax in excess of ten mills on the dollar of taxable value being invalid could not be recovered. Wibaux Improvement Co. v. Breitenfeldt, 67 M 206, 207 et seq., 215 P 222.

Interest on Bonded Indebtedness

Under this section, prior to 1923 and 1925 amendments, a city had the power to levy special taxes for the purpose of paying interest on bonded indebtedness and creating a sinking fund. The contention that the taxing power of a city of a class other than the first class was limited to a ten mill levy for all purposes by this section, was without merit. First Nat. Bank of Glendive v. Sorenson, 65 M 1, 5, 210 P 900.

84-4701.1. All-purpose exclusive levy authorized. It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all-purpose exclusive annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. This act shall not be construed as repealing those statutes providing for multiple separate levies.

History: En. Sec. 1, Ch. 82, L. 1965.

84-4701.2. Maximum rate of all-purpose exclusive levy. Notwithstanding the provisions of the statutes of Montana to the contrary, the cities and towns of the state of Montana may make an all-purpose and exclusive annual levy which does not exceed the average number of mills on the dollar levied for all purposes in the preceding three (3) fiscal years upon the assessed value of all the taxable property in such cities and

towns, for all municipal purposes in lieu of the multiple levies now authorized by statute.

History: En. Sec. 2, Ch. 82, L. 1965.

84-4701.3. Allocation of all-purpose levy. In the event the all-purpose levy method, provided for in section 84-4701.2, is followed in municipal financing, any municipality following it shall allocate the levy on a mill basis to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem best.

History: En. Sec. 3, Ch. 82, L. 1965.

84-4701.4. All-purpose levy election binding for year—abandonment in succeeding years. Any municipality electing to follow the all-purpose levy method provided for in section 84-4701.2 shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

History: En. Sec. 4, Ch. 82, L. 1965.

84-4701.5. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as a single levy for general fund purposes.

History: En. Sec. 5, Ch. 82, L. 1965.

84-4702. Special tax by cities and towns to provide postwar funds authorized. For the purpose of accumulating and providing postwar funds for the construction, improvement, repair and maintenance of public streets, avenues, alleys and ways, the council or commission of each city and town in this state may, in their discretion, levy and cause to be collected, during each or either of the fiscal years beginning July 1, 1945 and ending June 30, 1946, and beginning July 1, 1946 and ending June 30, 1947, a special tax upon the taxable property in the city or town of not more than five (5) mills on the dollar, which shall be payable to the city or town treasurer with other taxes, which levies shall be in addition to all other levies now authorized by law to be made for street purposes. All moneys derived from such levies shall be placed in a special street fund and shall be kept separate from all other street fund moneys.

History: En. Sec. 1, Ch. 172, L. 1945;
amd. Sec. 1, Ch. 107, L. 1947.

84-4703. Transfer of unexpended funds in street fund. The council or commission of each city or town may, in their discretion, at the close of each of the fiscal years ending June 30, 1945, June 30, 1946, and June 30, 1947, transfer to such special street fund any unexpended and unappropriated funds remaining in the city or town street fund, over and above the amount set apart and appropriated as a reserve for the then current fiscal year.

History: En. Sec. 2, Ch. 172, L. 1945.

84-4704. Expenditures from special fund, when—purpose—approval of electors, when. No expenditures for any purpose whatever shall be made from such special street fund until after April 1, 1947. The city or town council or commission of any city or town having such fund may thereafter provide for the expenditure thereof for the purpose of constructing, improving, repairing and maintaining the public streets, avenues, alleys, and ways of the city or town; provided that no expenditure in excess of ten thousand dollars ($10,000.00) for any single purpose as defined in section 16-2009, shall be made from such fund without the approval of a majority of the electors of the city or town voting on the question of such expenditure at an election to be provided by law.

History: En. Sec. 3, Ch. 172, L. 1945; amd. Sec. 1, Ch. 107, L. 1947.

84-4705. Budget required. After April 1, 1947, the council or commission of any city or town having such special street fund may adopt a budget making appropriations therefrom for the construction, improvement, repair and maintenance of the public streets, avenues, alleys and ways in the city or town for the remaining portion of the then current fiscal year, notice thereof being given, hearing thereon had and such budget adopted in manner provided for emergency budgets by section 11-1409; for each fiscal year thereafter when any moneys are to be expended therefrom, the city or town budget shall contain and set forth in the annual budget a separate section as a budget for such special street fund, and all of the provisions of the city budget law shall apply thereto; provided, however, that at any time after the close of the fiscal year ending June 30, 1947, the council or commission may in their discretion, instead of providing a separate budget for the expenditure of any moneys then in such special fund, transfer the same to the street fund.

History: En. Sec. 4, Ch. 172, L. 1945; amd. Sec. 1, Ch. 107, L. 1947.

84-4706. (5195) **Cities and towns may raise money by taxation in excess of levy now permitted, how.** Whenever the council of any city or town shall deem it necessary to raise money by taxation, in excess of the levy now allowed by law, for any purpose for which said city or town is authorized to expend moneys raised by taxation in said city or town, it shall submit the question of such additional levy to the legal voters of such city or town who are taxpaying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or town; provided, however, that such additional levy shall not exceed five mills.

History: En. Sec. 1, Ch. 12, L. 1919; re-en. Sec. 5195, R. C. M. 1921.

References

Wibaux Improvement Co. v. Breitenfeldt, 67 M 206, 208, 215 P 222.

84-4707. (5196) **Notice of election.** Where the question of making such additional levy is so submitted, notice thereof shall be given by publication for at least thirty days prior to such election in every news-

paper published in said city or town, and by posting a like notice for the same period of time in a public place in each ward of said city or town.

History: En. Sec. 2, Ch. 12, L. 1919; re-en. Sec. 5196, R. C. M. 1921.

84-4708. (5197) **Submission of question to state object of levy—use of funds—balance.** The submission of said question shall expressly provide for what purpose such additional levy is to be made, and, if authorized, the money raised for such additional levy shall be used for that specific purpose only; provided, that if any balance remain on hand after the purpose for which said levy was made has been accomplished, such balance may, by vote of the council, be transferred to any other fund of said city or town.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R. C. M. 1921.

84-4709. (5198) **Separate ballots when levy for more than one purpose —form of ballot and marking—conduct of election.** If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots, each of which ballots shall be in substantially the following form: Shall the city (or town) council be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made.)

☐	Against Additional Levy.
☐	For Additional Levy.

The voters shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state. The election shall be held and the votes canvassed and returned as in other city or town elections. If the majority voting on the question are in favor of such additional levy or levies, the city or town council shall so certify, and such additional levy or levies of taxes shall be made by the city or town council for that year.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R. C. M. 1921.

84-4710. (5199) **Registration of electors.** The council may provide by ordinance for the registration of qualified electors who are taxpaying freeholders in such city or town, and no person shall be entitled to register or vote at such election who is not such taxpaying freeholder and qualified elector.

History: En. Sec. 5, Ch. 12, L. 1919; re-en. Sec. 5199, R. C. M. 1921.

Collateral References
Elections⇐97.
29 C.J.S. Elections § 38.

84-4711. (5199.1) **Qualifications for voting on creation or increasing municipal or school indebtedness.** That from and after the passage and

approval of this act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof; provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another city, town, school district or other municipal corporation.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; amd. Sec. 1, Ch. 126, L. 1959.

Legislative Intent

By the enactment of chapter 47, Laws of 1929, amendatory of chapter 98, Laws of 1923 (this section), the legislature intended to provide the procedure for the holding of all elections called for the purpose of determining whether indebtedness of the political units therein mentioned shall be created or increased when the approval of the electors is required by law, including the issuance of city water bonds. Weber v. City of Helena, 89 M 109, 112 et seq., 297 P 455.

References

State ex rel. Henderson v. Dawson County, 87 M 122, 142, 286 P 125.

Collateral References

Elections⇐83.
29 C.J.S. Election § 29.

DECISIONS UNDER FORMER LAW

Conduct of Election

Where a city mistakenly called and conducted a special election submitting the question of increasing its indebtedness by the issuance of bonds for water plant purposes under sections of the Revised Codes which had been superseded by this section and section 5199.2, R. C. M. 1935 (since repealed), none of the provisions of which were observed, the election was void irrespective of the good faith in which the city authorities acted. Weber v. City of Helena, 89 M 109, 112 et seq., 297 P 455.

Registration of Electors

The provisions of this section and section 5199.2, R. C. M. 1935 (since repealed), and not sections 11-715, 5278 and 5279 R. C. M. 1935 (since repealed), govern the procedure to be followed for the registration of electors and their qualifications in a special city election called for the purpose of submitting to them the question of the issuance of city water plant bonds. Weber v. City of Helena, 89 M 109, 112 et seq., 297 P 455, distinguished in 111 M 417, 432, 109 P 2d 1094.

84-4712. (5200) **Special taxes and assessments.** The council may also assess and levy the special taxes or assessments provided for in Title 11, sections 44-301 to 44-303, inclusive, sections 62-201 to 62-210, inclusive, and this chapter.

History: En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907; re-en. Sec. 5200, R. C. M. 1921.

Special Taxes

A city, under this section, had the power to levy special taxes for the purpose of paying interest on bonded indebtedness and creating a sinking fund, and the contention that the taxing power of a city of a class other than the first class was limited to a ten mill levy for all purposes by section 84-4701, was without merit. First Nat. Bank of Glendive v. Sorenson, 65 M 1, 6 et seq., 210 P 900.

84-4713. (5201) **Taxes in cities and towns which have exceeded the constitutional limit of indebtedness.** All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city or town, the indebtedness of which equals or exceeds the limit provided in section 6, article XIII of the constitution, may be used in payment of cur-

rent expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one and one-half per cent annually upon the per centum of the assessed value of all taxable property in such city or town.

History: En. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R. C. M. 1921; amd. Sec. 2, Ch. 175, L. 1925.

Collateral References

Municipal Corporations⇐864 (2).
64 C.J.S. Municipal Corporations § 1851.

84-4714. (5202) **City authorized to levy special taxes.** Hereafter any city, the indebtedness of which equals or exceeds said limit, shall be authorized to levy and collect special taxes for municipal and administrative purposes, and the city council in making such levy shall designate the amount thereof for each of said purposes, and each tax, when collected, shall constitute a fund out of which the expenses incurred for the purpose for which such tax was levied shall be paid. The expenses incurred for any such purpose shall be paid out of the fund so to be provided therefor, and not otherwise.

History: En. Sec. 2, Ch. 21, L. 1903; re-en. Sec. 3345, Rev. C. 1907; re-en. Sec. 5202, R. C. M. 1921.

Collateral References

Municipal Corporations⇐864 (1).
64 C.J.S. Municipal Corporations § 1854.

84-4715. (5203) **Annual tax—equalization and collection.** The council has power to levy, collect, and equalize annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy, assessment, equalization, and collection of the same.

History: En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R. C. M. 1921.

Street Tax

Under this section and section 84-4729, as the latter stood before its amendment in 1895, a town council had power to levy taxes, and taxes levied for street purposes could not be worked out by taxpayers, if they elected to do so under the law of 1887. Town of White Sulphur Springs v. Pierce, 21 M 130, 132, 53 P 103.

Time and Method of Collection

This section and city ordinances must yield to chapter 96, Laws of 1923 (84-4101 et seq.), fixing the time and method of collecting taxes and interest thereon. Thomas v. City of Missoula, 70 M 478, 482, 226 P 213.

References

State ex rel. Malott v. Cascade County, 94 M 394, 411, 22 P 2d 811.

Collateral References

Municipal Corporations⇐956 (1).
64 C.J.S. Municipal Corporations § 1978.
38 Am. Jur. 67, Municipal Corporations, § 381 et seq.

84-4716. (5204) **Levy, etc., to be made under this chapter.** Until the passage of such ordinance the levy, assessment, equalization, and collection of municipal taxes are, and the proceedings for such purposes must be, as provided in this chapter.

History: En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R. C. M. 1921.

Collateral References

Municipal Corporations⇐968 (1) et seq.
64 C.J.S. Municipal Corporations § 2035.

84-4717. (5205) **Basis of taxation.** The assessment made by the county assessor for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

History: En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R. C. M. 1921.

Assessment of City Property

Under this section and section 84-4729, the assessment of property of a city was not completed until the date of the resolution of the city council fixing and levying the amount of taxes to be levied and assessed for such year. State ex rel. City of Butte v. Johnson, 16 M 570, 572, 41 P 706.

Legal Levy

The municipal authorities of an incorporated city could make a legal assessment in electing to take the assessment made by the county and state assessing authorities as the basis for the levy of municipal taxes on property within such city; and the levy of lawful taxes thereon by such city, according to the provisions of its charter and ordinances, constituted a legal levy. Lockey v. Walker, 12 M 577, 583, 31 P 639.

Valuation by County Assessor

Under the provisions of this section and other statutes applicable and in force from time to time, the basis of taxation for a city or town has been the valuation made by the county assessor for state and county purposes. The city or town council has had no authority to amend or change the items listed in the roll furnished by him, its office being merely to ascertain the rate of taxation necessary to produce the amount required to meet the expenses of the city or town government, and to certify it to the county treasurer. Lockey v. City of Bozeman, 42 M 387, 397, 113 P 286.

Collateral References

Municipal Corporations⇐972 (2).
64 C.J.S. Municipal Corporations § 2045.

84-4718. (5206) **Duty of county assessor.** It is the duty of the county assessor, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in the cities and towns within the county.

History: En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R. C. M. 1921.

References

State ex rel. Blair v. Kuhr, 86 M 377, 283 P 758.

Collateral References

Municipal Corporations⇐972 (3).
64 C.J.S. Municipal Corporations § 2047.

84-4719. (5207) **Copies of assessment books to be furnished cities and towns.** On or before the second Monday in July of each year the assessor must furnish to all cities of the third class and towns within his county which shall make written request for the same, on or before the first Monday in April of each year, a complete certified copy of his assessment book, so far as such assessment book pertains to property within the limits of said cities and towns.

History: En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R. C. M. 1921.

Collateral References

Municipal Corporations⇐971 (1).
64 C.J.S. Municipal Corporations § 2030.

84-4720. (5208) **Charge of assessor for making copies.** The assessor may charge such cities and towns five cents per folio of one hundred words

for each copy of his assessment book furnished such cities and towns as provided in the preceding section.

History: En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R. C. M. 1921.

84-4721. (5209) **Equalization of taxes.** The equalization of assessments of property made by the county board of equalization applies to the assessment of property in any city or town, and must be taken as the equalization thereof. But the council may at any time after the adjournment of said board, upon good cause shown, reduce the city or town taxes or penalties thereon as is just and equitable, or order any tax that has been improperly assessed or paid by mistake to be refunded.

History: En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R. C. M. 1921.

Collateral References

Municipal Corporations⇐974 (1).
64 C.J.S. Municipal Corporations § 2055.

84-4722. (5210) **Affidavit of aggrieved party.** The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: En. Sec. 4866, Pol. C. 1895; re-en. Sec. 3352, Rev. C. 1907; re-en. Sec. 5210, R. C. M. 1921.

Collateral References

Municipal Corporations⇐974 (2).
64 C.J.S. Municipal Corporations § 2056.

84-4723. (5211) **Preparation of assessment book.** It is the duty of the county clerk, on or before the first Monday in October in each year, to make a duplicate of the corrected assessment book for each city in the county, the treasurer of which is required by ordinance of such city to collect its taxes. Such book shall be styled "The Duplicate Assessment Book for the City of .....," and must contain a copy of the "corrected assessment book" of the county as far as the same refers to city property.

History: En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907; re-en. Sec. 5211, R. C. M. 1921.

Delivery to City Treasurer

It is the duty of the county clerk to deliver to the city treasurer the duplicate assessment book required by this section and sections 84-4724 and 84-4725 at the same time the original or duplicate is delivered to the county treasurer. State ex rel. City of Butte v. Weston, 29 M 125, 129, 74 P 415.

References

State ex rel. City of Butte v. Johnson, 16 M 570, 573, 41 P 706.

Collateral References

Municipal Corporations⇐972 (1).
64 C.J.S. Municipal Corporations § 2045.

84-4724. (5212) **Book to be furnished by city.** Such duplicate must be made in a book furnished by the city clerk of each city in the county, and ruled in columns specifying the different funds so that the city treasurer may extend the same and collect the taxes.

History: En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R. C. M. 1921.

References

State ex rel. City of Butte v. Johnson, 16 M 570, 573, 41 P 706; State ex rel. City of Butte v. Weston, 29 M 125, 126, 74 P 415.

84-4725. (5213) **Delivery of book to city treasurer.** The county clerk must deliver such duplicate assessment book to each city treasurer, and take

his receipt therefor, having attached thereto the affidavit similar to the one set out in section 84-4006.

History: En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R. C. M. 1921.

Affidavit of County Clerk

The word "similar" in this section does not require the county clerk to make an affidavit identical with the one required by section 84-4006, but merely requires an affidavit covering all the facts showing that the clerk had done his duty in making the copy of the assessment book. State ex rel. City of Butte v. Weston, 29 M 125, 131, 74 P 415.

84-4726. (5214) **Collection of taxes—delinquent taxes.** The county treasurer of each county must collect the tax levied by all cities and towns in his respective county, except in case of such cities of the first and second and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment book. The county treasurer must collect such city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes, with the same penalties and interest in case of delinquency. All publications for sales for delinquent taxes shall include such city or town taxes, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county, and state taxes, and with the penalties, interest, and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the county treasurer as provided by law, shall be credited to the state, county and city or town, pro rata, in the same proportions as provided in section 84-4189.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R. C. M. 1921.

Remittance to Municipal Treasurer

Although, under this section, the county treasurer must collect taxes for a city or town which has not by ordinance placed the duty of collection upon its own treasurer, since no provision is made as to when the money so collected must be turned over to the city or town treasurer, the county treasurer must, within a reasonable time after collection, compute the amount due the city or town and pay it over to the proper custodian. The lapse of one month after collection of the bulk of the city or town taxes is not a reasonable time within which to perform that duty. State ex rel. City of Cut Bank v. McNamer, 62 M 490, 494, 205 P 951.

Where a city has failed to provide by ordinance for the collection of its taxes by its own treasurer, the treasurer of the county in which such city is situated must, under this section, collect and pay them to the city treasurer without delay. State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 158 et seq., 252 P 805, explained in 89 M 342, 348, 297 P 498.

"Tax" and "Taxes"

Assessments for special city improvements which under section 11-2233, the county treasurer is required to collect, fall within the meaning of the words "tax" and "taxes" as employed in this section, making it the duty of the county treasurer to collect city taxes where a city has not imposed that duty upon its own treasurer. State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 158 et seq., 252 P 805.

References

Town of White Sulphur Springs v. Pierce, 21 M 130, 132, 53 P 103; State ex rel. City of Butte v. Weston, 29 M 125, 126, 74 P 415; Lockey v. City of Bozeman, 42 M 387, 397, 113 P 286; City of Butte v. Bennetts, 51 M 27, 30, 149 P 92; School District No. 1 v. City of Helena, 87 M 300, 307, 287 P 164; State ex rel. City of Butte v. Healy, 105 M 227, 232, 70 P 2d 437.

Collateral References

Municipal Corporations⇨978 (1), 980 (4), (5).

64 C.J.S. Municipal Corporations §§ 2070, 2088, 2089.

Mandamus to compel collection of taxes. 58 ALR 117.

Lien for tax imposed by one taxing unit as affected by lien or sale for tax imposed by another taxing unit of the same state. 135 ALR 1464.

Right of delinquent taxpayer or other person having an original interest in the property to purchase at, or acquire and hold, as against taxing unit, title derived from or through, tax sale. 136 ALR 1145.

Validity of tax sale of land acquired by public corporation after levy and before sale. 158 ALR 563.

84-4727. (5215.1) **Delinquent tax—sales of property taxed or specially assessed by cities or towns.** Whenever, in a city or town whose treasurer collects its own taxes or special assessments, or both thereof, any such taxes or assessments shall become delinquent, no tax sale shall be held by such city or town treasurer therefor, but such city or town treasurer must, within ten (10) days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated. Such certificate shall contain the description of each lot or parcel of land on which any tax or assessment has become delinquent, the name and address of the person to whom assessed, the date when the same became delinquent, the amount of the delinquent tax or assessment, the penalty to be added thereto, and the total amount of such delinquent tax or assessment with penalty added. If any special assessment is payable in installments and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate, provided, however, that if the city or town council, by the adoption of an appropriate resolution shall declare the whole of the assessment remaining unpaid to be delinquent, as provided in section 11-2233, then the whole of the assessment remaining unpaid shall be included in such certificate.

Upon receipt of such certificate the county treasurer shall enter such delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes must include all such city and town delinquent taxes and assessments, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county and state taxes and special assessments, with the penalties, interest and costs provided by law.

History: En. Sec. 1, Ch. 148, L. 1927.

Assessments for Special Improvements

A county treasurer could not be compelled, under this section to spread upon the delinquent tax roll of the county certain assessments for special city improvements which became delinquent on a city lot after the county had bought it in at a tax sale since special assessments are not taxes within the meaning of section 84-4161, and the liens of such assessments were extinguished upon issuance of the tax deed. State ex rel. City of Great Falls v. Jeffries, 83 M 111, 114, 270 P 638, explained in 108 M 1, 6, 90 P 2d 164.

84-4728. (5215.2) **Collection of delinquent taxes by cities authorized.** All cities in the state of Montana, who by ordinance provide for the collection of city taxes and assessments, are hereby authorized and empowered to solicit payment, ask for, receive and receipt for delinquent taxes and assessments due any such city, and upon receipt of payment thereof by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify to the county treasurer of the county in which such city is situated, the fact of such payment with the amount thereof, a description of the property charged with such delinquent taxes or assessments so paid and the name of the person to whom the same were assessed; provided, however, that nothing in this act is intended to or shall prevent

the county treasurer of the county in which such city is situated to collect such delinquent taxes or assessments, but is intended as an aid to the collector of such delinquent taxes and assessments.

History: En. Sec. 1, Ch. 145, L. 1933.

84-4729. (5216) **Fixing amount of tax levy—certification to county or city clerk.** The council must on or before the second Monday of August of each year, by resolution, determine the amount of the city or town taxes for all purposes, to be levied and assessed on the taxable property in the city or town, for the current fiscal year and the city or town clerk must at once certify to the county clerk a copy of such resolution and the county treasurer must collect said taxes as in this chapter provided. Provided, that in cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer.

History: En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921; re-en. Sec. 5216, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1925.

Certification by City Clerk

The requirement of this section that after the city council has determined the amount of city taxes to be levied on city property for all purposes, the city clerk must certify the resolution passed by the council in that behalf to the county clerk, was sufficiently complied with by clerk's attestation, the terms, "certify" and "attest" meaning substantially the same thing, to wit, that what appears in the instrument is genuine or true. Morse v. Kroger, 87 M 54, 59, 285 P 185.

References

State ex rel. City of Butte v. Johnson, 16 M 570, 571, 41 P 706; Town of White Sulphur Springs v. Pierce, 21 M 130, 132, 53 P 103; First Nat. Bank of Glendive v. Sorenson, 65 M 1, 6, 210 P 900; State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 161, 252 P 805.

Collateral References

Municipal Corporations⇨ 969 (1).
64 C.J.S. Municipal Corporations § 2037.

84-4730. (5217) **Fiscal year.** The fiscal year of cities and towns commences on the first day of July of each year, and ends on the last day of June of each year.

History: En. Sec. 4873, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3359, Rev. C. 1907; re-en. Sec. 5217, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1927.

Cross-Reference

Fiscal year, sec. 11-1402.

Collateral References

Municipal Corporations⇨879.
64 C.J.S. Municipal Corporations § 1878.

84-4731. (5218) **Annual appropriation—manner and time of making.** The council must, during the month of July in each fiscal year, pass an ordinance to be known as the "Annual appropriation for the ..... of ..... for the fiscal year beginning July 1, 19....," in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for such fiscal year, and there must be specified therein the amount appropriated for each separate object or fund, and the salary or compensation to be paid to each officer of the city or town.

History: En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907; re-en. Sec. 5218, R. C. M. 1921; amd. Sec. 2, Ch. 25, L. 1927.

Water Supply Contract

The fact that the city council, in accordance with this section, appropriated a sum to pay for water furnished under a contract, does not make the city liable

therefor, since the contract out of which the liability arose is void, and no lawful authority to pay it exists. State ex rel. Helena Water Works Co. v. City of Helena, 24 M 521, 537, 63 P 99.

Collateral References

Municipal Corporations⇐890.
64 C.J.S. Municipal Corporations § 1887.

84-4732. (5219) **Road poll tax.** All able-bodied male inhabitants of a city or town, between the ages of twenty-one and forty-five years, must pay an annual road poll tax not exceeding three dollars.

History: En. Sec. 4875, Pol. C. 1895; re-en. Sec. 3361, Rev. C. 1907; re-en. Sec. 5219, R. C. M. 1921.

NOTE.—This section held a violation of section 4, article XII of the constitution in that the legislature levied directly a road tax $3.00. Opinions of Attorney General, Vol. 18, No. 178.

Cross-References

Fire department members exempt from poll tax, sec. 11-2004.
Militiamen exempt from poll tax, sec. 77-403.

Exclusive Jurisdiction over Street Work

With relation to work to be done upon the streets of a city, such streets are within the exclusive jurisdiction of the municipality through its council. State ex rel. City of Butte v. Healy, 105 M 227, 231, 70 P 2d 437.

References

Snook v. City of Anaconda, 26 M 128, 134, 66 P 756; Ford v. City of Great Falls, 46 M 292, 304, 127 P 1004.

Collateral References

Highways⇐150.
40 C.J.S. Highways § 306.
51 Am. Jur. 435, Taxation, § 412.

Poll tax as property or privilege tax. 103 ALR 103.

84-4733. (5220) **List of persons liable for poll tax.** The city clerk must make a list of all persons liable for such tax, and present the same to the council for inspection and correction at a regular or special meeting to be held not later than the third Monday of May. On or before the first regular meeting in June the council must direct a copy of such list, as corrected, certified by the clerk, to be delivered to the city treasurer, and the city treasurer must forthwith collect such taxes from the persons named in the list, and from such other persons liable for the same as he may add thereto; provided, that any person who is assessed for a property tax in the city may pay such poll tax at the time he pays his general tax, and in such case the poll tax shall be added upon the assessment list to other taxes of persons liable therefor paying taxes upon real and personal property, by the county clerk upon a list of the names of persons liable for the same being certified to by the city clerk.

History: En. Sec. 436, 5th Div. Comp. Stat. 1887; amd. Sec. 4876, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3362, Rev. C. 1907; re-en. Sec. 5220, R. C. M. 1921.

References

Snook v. City of Anaconda, 26 M 128, 134, 66 P 756.

84-4734. (5221) **Powers of city clerk and treasurer.** The city or town clerk, in making such list, and the city or town treasurer in collecting such tax, have the same powers in reference thereto as the county assessor and county treasurer have in assessing and collecting the poll tax provided for in sections 84-4201 to 84-4214.

History: En. Sec. 4877, Pol. C. 1895; re-en. Sec. 1, p. 225, L. 1897; re-en. Sec. 3363, Rev. C. 1907; re-en. Sec. 5221, R. C. M. 1921; amd. Sec. 1, Ch. 47, L. 1937.

Compiler's Note

Section 84-4212, included in the reference to sections 84-4201 to 84-4214 in this

section, was repealed by Ch. 134, Laws 1947.

References

Snook v. City of Anaconda, 26 M 128, 134, 66 P 756.

84-4735. (5222) **Poll tax—how expended.** The money so collected must be expended for street purposes in the city or town. No street or alley in a city or town is a county road or a part thereof, nor constitutes a part of a road district of a county.

History: En. Sec. 4878, Pol. C. 1895; re-en. Sec. 3364, Rev. C. 1907; re-en. Sec. 5222, R. C. M. 1921.

Exclusive Jurisdiction over Street Work

With relation to work to be done upon the streets of a city, such streets are within the exclusive jurisdiction of the municipality through its council. State ex rel. City of Butte v. Healy, 105 M 227, 231, 70 P 2d 437.

References

Snook v. City of Anaconda, 26 M 128, 134, 66 P 756; Ford v. City of Great Falls, 46 M 292, 304, 127 P 1004.

84-4736. (5223) **Work on the streets, etc.** The council has power to order any work provided in this code to be done upon the streets, alleys, or public places of a city or town.

History: En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907; re-en. Sec. 5223, R. C. M. 1921.

References

Snook v. City of Anaconda, 26 M 128, 134, 66 P 756; Ford v. City of Great Falls, 46 M 292, 304, 127 P 1004.

Collateral References

Municipal Corporations⇐269 (2).
63 C.J.S. Municipal Corporations § 1044.

84-4737. (5224) **License tax may be levied.** The council may, by ordinance, license all industries, pursuits, professions and occupations, as provided in section 11-904, and the city treasurer must collect the same in the manner and at the time prescribed by ordinance. The city clerk must issue such licenses.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R. C. M. 1921.

Amount of License Fee

What is a reasonable license fee must depend largely upon the sound discretion of the city council, having reference to the circumstances and necessities of the case. Unless, however, the amount is manifestly unreasonable, in view of its purpose as a regulation, the court will not adjudge it a revenue measure. City of Bozeman v. Nelson, 73 M 147, 155, 237 P 528.

Collateral References

Licenses⇐5½.
53 C.J.S. Licenses § 10.
37 Am. Jur. 956, Municipal Corporations, § 305 et seq.

Validity of ordinance interfering with privacy in restaurants. 5 ALR 965.

Regulations concerning location of laundries. 6 ALR 1597.

Public regulation or authorization of gas filling stations. 18 ALR 101; 29 ALR 450; 34 ALR 507; 42 ALR 978; 49 ALR 767; 55 ALR 256; 79 ALR 918 and 96 ALR 1337.

Regulation of barbers, 20 ALR 1111 and 98 ALR 1108.

Licensing and regulation of pool and billiard rooms and bowling alleys. 20 ALR 1482; 29 ALR 41; 53 ALR 149 and 72 ALR 1339.

Regulation of junk dealer. 30 ALR 1427 and 45 ALR 2d 1391.

Validity of regulations as to plumbers and plumbing. 36 ALR 1342 and 22 ALR 2d 816.

Public regulation of dry cleaning and dyeing establishments. 49 ALR 110 and 128 ALR 678.

Municipal regulation of sale of poison, drugs or medicines. 54 ALR 735.

Validity of ordinance fixing closing hours for certain kinds of business. 55 ALR 242.

Municipal regulation of electricians and the installation of electrical work. 96 ALR 1506.

Regulation and sale of newspapers on the streets. 107 ALR 1275.

Regulation of auctions and auctioneers. 111 ALR 473.

Regulation of the sale of flowers or florist business. 124 ALR 547.

Regulations of tourist or trailer camps. 22 ALR 2d 774.

Regulation of house to house canvassing by peddlers, etc. 35 ALR 2d 355.
Regulation of beauty shops or specialists. 56 ALR 2d 879.
Validity of ordinance relating to undertakers or embalmers. 89 ALR 2d 1338.

CHAPTER 48

FREIGHT LINE COMPANIES—TAXATION

Section 84-4801 to 84-4817. Superseded.
84-4818. Definitions.
84-4819. Rate of tax—situs.
84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis.
84-4821. Notice of incorrectness or insufficiency—procedure upon failure to file report.
84-4822. Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit.
84-4823. Penalty for nonpayment by railroad company.
84-4824. Actions to recover delinquent taxes and penalties—additional taxes.
84-4825. Disposition of moneys—refund claims.
84-4826. Failure to file report—estoppel to impeach board's determination.

84-4801 to 84-4817. (2097 to 2110) **Superseded—Chapter 137, Laws of 1949.**

Supersession

These sections (Secs. 1 to 13, Ch. 5, Ex. L. 1919; Secs. 1, 2, Ch. 146, L. 1921; Secs. 1 to 4, Ch. 185, L. 1925; Sec. 1, Ch. 75, L. 1931; Sec. 1, Ch. 134, L. 1933; Secs. 1 to 7, Ch. 26, L. 1935), relating to the taxation of freight line companies, are superseded by Ch. 137, Laws 1949 (secs. 84-4818 to 84-4826).

84-4818. Definitions. The following words and phrases, when used in this act, shall have the following definitions:

(a) Freight line companies. Any person, or persons, joint-stock company, association, or corporation, wherever organized or incorporated, not being the owner, lessee, or operator of any railroad, engaged in the business of operating cars, or engaged in the business of furnishing or leasing cars, not otherwise listed for taxation in Montana, for the transportation of freight (whether said cars be owned by such company or any other person or company) over any railway line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such company, whether such cars be termed flat, coal, ore, tank, stock, gondola, furniture, or refrigerator cars, or by some other name.

(b) Board. The term "board" shall mean the state board of equalization of the state of Montana.

(c) Earnings. The terms "gross earnings" or "total gross earnings" are hereby declared to be and shall be construed to mean all earnings on business beginning and ending within this state, and a proportion, based upon the proportion of mileage within the state to the entire mileage over which such business is done, of all earnings on interstate business passing through, into, or out of this state.

History: En. Sec. 1, Ch. 137, L. 1949.

84 C.J.S. Taxation §§ 160, 171, 173.
51 Am. Jur. 776, Taxation, § 870 et seq.

Collateral References

Taxation⇨142, 146, 148.

84-4819. Rate of tax—situs. Every such freight line company shall pay annually for each calendar year a sum in the nature of a tax in the amount of five per cent (5%) of the total gross earnings received from all sources by reason of the use or operation of such cars within this state by such freight line company, which shall be in lieu of all other taxes upon such property of any freight line company so paying the same; provided, for the purpose of taxation, all cars used exclusively within the state or used partially within and partially without the state, are hereby declared to have situs within the state, the value thereof for such taxation to be determined as provided for in this act.

History: En. Sec. 2, Ch. 137, L. 1949.

84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis. Every railroad company so using or leasing said cars, upon payment therefor to such company shall withhold from such payment five per cent (5%) of as much thereof as shall constitute gross earnings of such freight line company within this state. On or before March 1, 1950, such railroad company shall make and file with the board a consolidated statement in a form to be prescribed by the board, showing the amount of such payments for the next preceding calendar year ending December 31, 1949, and the amounts so withheld and due the state of Montana. A like report shall be made on or before March 1st of each year thereafter. Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state of Montana. Upon receipt of such payment, the board shall issue its receipt, in triplicate, one copy of which shall be mailed to such railroad company, one to the freight line company for which such tax is paid, and one to be retained in the office of the state board of equalization. The mailing of such receipt to such freight line company shall constitute notice of the filing of said statement and payment of said tax. If any railroad company shall fail to make or file such report, or if the state board of equalization be dissatisfied with any report filed, the board shall have the power to conduct a hearing and investigation for the purpose of ascertaining from whatever sources to which it has access, the gross earnings of such freight line company from the use or operation of such cars within the borders of this state, and in conducting such hearing and investigation, the board shall have power, by subpoena, to require officers, agents, employees or receivers of such railroad company, or of such freight line company, to attend before the state board of equalization, and to bring with him, or them, for inspection by the board, any books, papers, or documents in his or their possession, or under his or their control, in any manner affecting said tax, and to testify under oath concerning any matter relating to the organization or business of such freight line company within this state. Any person who shall fail, neglect or refuse to attend before the board, when subpoenaed so to do, or who shall fail, neglect, or refuse to bring with him and submit for inspection by the board any books, papers, or documents in his possession or under his control affecting the organization or business of such freight line company within this state, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall

be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000,00), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months. Every freight line company, as hereinbefore defined, shall be liable for the payment of the difference, if any, between five per cent (5%) of all gross earnings in this state and the amounts withheld and remitted to the state of Montana by railroads, and shall be liable for the payment of any additional taxes which the board may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis.

History: En. Sec. 3, Ch. 137, L. 1949.

Collateral References

Taxation⇐368, 388, 392.
84 C.J.S. Taxation §§ 426, 427, 435.

DECISIONS UNDER FORMER LAW

Foreign Corporations

Where foreign corporation was not engaged in transportation of commodities within state but owned freight cars which were furnished to common carriers, corporation's cars were not taxed in proportion to amount of and actual physical presence and use within several taxing districts of state, freight cars owned by others were taxed on different basis and state did not levy any tax against freight cars owned by railroads not operating within state but which were furnished for compensation to railroads operating within state, the tax against cars of foreign corporation was discriminatory and denied due process and equal protection. State v. North American Car Corp., 118 M 183, 164 P 2d 161, 166.

84-4821. Notice of incorrectness or insufficiency—procedure upon failure to file report. Upon the filing of the reports herein provided for, the board shall compute and determine the amount of the tax, and on or before May 1st, notify such railroad company and freight line company if such report or payment of tax be incorrect or insufficient and such railroad company shall be liable for any additional tax found to be owing the state of Montana. If no report be filed as herein required, the board shall, on or before May 1st, ascertain from whatever sources to which it has access the gross earnings of such freight line company within this state from the use or operation of such cars by such railroad company; or if the gross earnings are not capable of being ascertained, the board may estimate the gross earnings of such freight line company within this state from such railroad company and the railroad company which failed to make the report or pay the tax shall be liable for the same together with penalties as hereinafter provided.

History: En. Sec. 4, Ch. 137, L. 1949.

Collateral References

Taxation⇐393.
84 C.J.S. Taxation § 426.

84-4822. Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit. It is hereby declared to be the intention of the legislature that the tax herein imposed be not greater than the amount of tax such freight line company would pay if its cars were taxed on an ad valorem basis. No tax other than as in this act imposed shall be assessed against the business or income of any such freight line company. Any such freight line company or railroad company, on or before June 1st of the year in which the tax herein imposed has been paid, may

file written complaint with the board concerning the correctness of the rate used, or the correctness of the amount of the tax imposed, or any other matter affecting the complainant under the provisions of this act, which is within the jurisdiction of the board. Upon filing such complaint, the board shall set the same for hearing, and shall give written notice thereof to the complainant at least ten (10) days before the date set for hearing thereon. Upon the hearing of any such complaint, the board shall take testimony to determine whether the amount of the tax, as computed and determined by the board, is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana, if assessed and taxed on an ad valorem basis. In such cases the board shall have the power, and it shall be its duty, to lower or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the board shall then determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess. Within six (6) months after such determination the claimant may present to the state board of equalization a sworn claim for such refund, setting forth the amount thereof. If the claim is found to be correct and is approved by the board and the state board of examiners, the state auditor shall draw his warrant upon the state treasurer for the amount of such claim and the same shall be paid out of the freight line company tax fund created by this act, in the same manner as other claims against the state are paid. In order to determine the amount of tax such freight line company would pay, said board may value all cars of any such company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of any such freight line company during the twelve (12) months' period ending December 31 of the preceding year, and may then apply to such value, the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities and other taxing subdivisions for state, county, school and municipal and other purposes.

History: En. Sec. 5, Ch. 137, L. 1949.

Collateral References

Taxation⇐459, 466.
84 C.J.S. Taxation §§ 514, 519.

DECISIONS UNDER FORMER LAW

Constitutionality

Section 2101, R. C. M. 1921, as amended in 1925 and 1931, providing that the "total gross earnings" of each freight line company, when ascertained and determined by the state board of equalization, "shall be deemed and considered as the assessed value" for taxation of all cars operated, furnished or leased by the company under consideration, and, having thus fixed and determined the "valuation" of the company's "property," the board is required to "levy and assess" against "such property" a tax of 5 per cent of such "valuation," violated sections 1 and 16 of article XII of the Montana constitution, since the "gross earnings" of the cars had no relation to their value. The gross earnings changed from year to year and did not reflect the true cash value of the cars. Fruit Growers Express Co. v. Brett, 94 M 281, 287 et seq., 22 P 2d 171.

Foreign Corporation

Where foreign corporation was not engaged in transportation of commodities within state but owned freight cars which were furnished to common carriers, corporation's cars were not taxed in proportion to amount of and actual physical presence and use within several taxing districts of state, freight cars owned by oth-

ers were taxed on different basis and state did not levy any tax against freight cars owned by railroads not operating within state but which were furnished for compensation to railroads operating within state, the tax against cars of foreign corporation was discriminatory and denied due process and equal protection. State v. North American Car Corp., 118 M 183, 164 P 2d 161, 166.

84-4823. Penalty for nonpayment by railroad company. If any such railroad company shall fail to pay such tax within the time specified in this act, a penalty of ten per cent (10%) of the amount of such tax shall be added thereto and charged against such railroad company by the board.

History: En. Sec. 6, Ch. 137, L. 1949.

84 C.J.S. Taxation §§ 617, 629, 695; 85 C.J.S. Taxation § 1027.

Collateral References

Taxation⇨526, 533, 582, 840.

84-4824. Actions to recover delinquent taxes and penalties—additional taxes. If the taxes and penalties provided for in this act to be paid by the railroad company on the property of such freight line company remain unpaid more than ninety (90) days from the due date, the board shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties, or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law. In the event the board under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, shall, after a hearing as herein provided, find taxes due from any such freight line company in excess of the five per cent (5%) of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined shall be due and payable by the freight line company upon which the assessment is made, and if such tax shall remain unpaid for more than ninety (90) days after notification of such assessment by the board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

History: En. Sec. 7, Ch. 137, L. 1949.

Collateral References

Taxation⇨585.

84 C.J.S. Taxation §§ 698, 701.

84-4825. Disposition of moneys—refund claims. All taxes collected under the provisions of this act shall be credited by the state treasurer to the state general fund. If any claim for refund be pending before the board, the board shall determine whether a refund should be made. An action or proceeding in court to determine the correctness of such tax must be instituted within sixty (60) days after the payment of the tax.

History: En. Sec. 9, Ch. 137, L. 1949; amd. Sec. 4, Ch. 126, L. 1963.

Collateral References

Taxation⇨906¾, 909.

85 C.J.S. Taxation §§ 1057, 1059.

DECISIONS UNDER FORMER LAW

Levies for State Purposes

The fact that state tax imposed on foreign corporation's freight cars in state went into state common school income and interest fund did not remove it from constitutional limitation on levies for state purposes. State v. North American Car Corp., 118 M 183, 164 P 2d 161, 167.

84-4826. Failure to file report—estoppel to impeach board's determination. If any railroad company or freight line company affected by this act shall refuse or neglect to make any report required by this act, or shall refuse or neglect to permit an examination of its books, records, accounts and papers upon demand of the board, or shall refuse or neglect to appear before the said board in obedience to its order or subpoena, or shall fail to object to the tax imposed by this act within the time and in the manner prescribed by this act, it shall be estopped to question or impeach the action or determination of the said board as to the validity of the tax imposed hereunder.

History: En. Sec. 10, Ch. 137, L. 1949.

Collateral References

Taxation⇨368.
84 C.J.S. Taxation § 435.

CHAPTER 49

INCOME TAX

Section 84-4901. Income tax—definitions.
84-4902. Rate of income tax.
84-4903. Tax on nonresident.
84-4903.1. Collection of tax from nonresidents—withholding authorized.
84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization—additional reports and information—rules and regulations—order for withholding payments.
84-4903.3. Exceptions from withholding requirements.
84-4903.4. Withholding agent.
84-4903.5. Quarterly payment by withholding agent—exception.
84-4903.6. Modification of withholding provisions.
84-4903.7. Failure to withhold or pay—penalties.
84-4903.8. Board may require withholding agent to make return and pay tax at any time.
84-4903.9. Amounts withheld as lien against agent—priority.
84-4903.10. Rights of nonresident.
84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor.
84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.
84-4903.13. Rules and regulations.
84-4904. Tax is personal debt due state.
84-4905. Adjusted gross income.
84-4906. Deductions allowed in computing net income.
84-4907. Nonresident taxpayers.
84-4907.1. Veterans' bonus—exemption from income tax law.
84-4908. Alternative deduction allowed in computing net income.
84-4909. Nondeductible items in computing net income.
84-4910. Exemptions.
84-4911. Income tax involving partnership—partnership statements required.
84-4912. Tax on beneficiaries or fiduciaries of estates or trusts.
84-4913. Information agents' duties.
84-4914. Returns and payment of tax—penalty and interest—refunds—credits.
84-4915. Exemption allowed nonresident—effect of changing resident status.
84-4916. Repealed.
84-4917. Return of fiduciary.
84-4918. Repealed.
84-4919. Time for filing—affidavit—forms.

84-4920. Revision of return—time for determining tax—examination of records and persons.
84-4920.1. Suspension of running of statute of limitations—grounds.
84-4921. Oaths may be administered by board members and employees.
84-4922. Revision—application—hearing—adjustment.
84-4923. Repealed.
84-4923.1. Review by court.
84-4924. Penalties for violations of act.
84-4925. Repealed.
84-4926. Deferment of collection of income tax of persons in military service—statute of limitations suspended.
84-4927. District court may grant stay of enforcement—no fines and penalties accrue during stay.
84-4928. Levy upon and sale of property for payment of income taxes.
84-4929. Action by attorney general.
84-4930. Board authorized to make rules and regulations.
84-4931. Divulging information unlawful—exceptions—penalty.
84-4932. Construction of net income.
84-4933 to 84-4935. Repealed.
84-4936. Income tax statute—reference—definition.
84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states.
84-4938. Furnishing copy of federal return.
84-4939. Declaration of estimated tax.
84-4940. Installment payments of estimated tax.
84-4941. Constitutionality.
84-4942. Definitions.
84-4943. Deduction and withholding of tax from wages—amount.
84-4944. Repealed.
84-4945. Employer liable for amounts deducted and withheld.
84-4946. Quarterly payment by employer—exception.
84-4947. Amount withheld considered as tax collected.
84-4948. Annual withholding statement.
84-4949. Repealed.
84-4950. Filing of annual statement by employer—duty.
84-4951. Amounts withheld, held in trust for state—warrants to collect.
84-4952. Repealed.
84-4953. Repealed.
84-4954. Violations by employer—penalties.
84-4955. Rules and regulations—remedies for administration, enforcement and collection.
84-4956. Credits and refunds.
84-4957. Repealed.
84-4958. Release of lien or partial discharge of property.

84-4901. (2295.1) **Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

(1) The word "board" means the state board of equalization.

(2) The word "taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this act, and does not include corporations.

(3) The words "taxable year" mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The words "fiscal year" mean an accounting period of twelve (12) months, ending on the last day of any month other than December thirty-first.

(4) The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(5) The word "paid" for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The term "received" for the purpose of computation of net income under this act, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

(6) The word "resident" applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this act with reference to the income of any taxable year, any person domiciled in the state of Montana, and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(7) The word "dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(8) The words "foreign country" or "foreign government" means any jurisdiction other than one embraced within the United States. The words "United States" include the states, the territory of Hawaii, and the District of Columbia.

(9) The words "information agents" include all individuals, corporations, associations and partnerships, in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income with respect to which any person or fiduciary is taxable under this act.

(10) The term "net income" means the gross income of a taxpayer less the deductions allowed by this act.

(11) The term "taxable income" means the gross income of a taxpayer less the deductions and exemptions provided for in this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959.

Cross-Reference

Rural electric co-operatives, exemption, sec. 14-528.

Constitutionality

The income tax law, being an excise tax, does not violate sections 1, 9 and 17 of article XII, of the state constitution, relating to the assessment of property for taxation. O'Connell v. State Board of Equalization, 95 M 91, 25 P 2d 114, explained in 99 M 543, 553, 554, 45 P 2d 307; Mills v. State Board of Equalization, 97 M 13, 33 P 2d 563.

The income tax law does not violate the equal protection of the law clause of the federal constitution. O'Connell v. State Board of Equalization, 95 M 91, 114, 25 P 2d 114; Mills v. State Board of Equalization, 97 M 13, 24, 33 P 2d 563.

Ad Valorem Tax on Bank Shares Not Repealed

Property or ad valorem tax was not recoverable on the theory that national bank shares had been taxed under the income tax law, and that the legislature had impliedly repealed the ad valorem method

of taxing them and substituted the tax on dividends, since no such substitution was made or intended, and ad valorem tax was not repealed by income tax on dividends. Johnson v. Meagher County, 116 M 565, 568, 155 P 2d 750, appeal dismissed 326 U S 679, 90 L Ed 397, 66 S Ct 31.

References

Pomeroy v. State Board of Equalization, 99 M 534, 45 P 2d 316; Poorman v. State Board of Equalization, 99 M 543, 45 P 2d 307; State v. Toomey, 135 M 35, 335 P 2d 1051.

Collateral References

Taxation⇐931.
85 C.J.S. Taxation § 1089.

Inhabitancy or residence within provision of income tax law as equivalent of domicile. 82 ALR 982.

Power of state to extend its taxing power by its definition of residence or its declared policy of domesticating foreign corporations. 100 ALR 1216.

Meaning of association or joint-stock company within statute taxing associations or joint-stock companies as corporations. 108 ALR 340; 144 ALR 1050 and 166 ALR 1461.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

(a) On the first one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of one per centum (1%);

(b) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of two per centum (2%);

(c) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of three per centum (3%);

(d) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of four per centum (4%);

(e) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of five per centum (5%);

(f) On any taxable income in excess of seven thousand dollars ($7,000.00) at the rate of seven per centum (7%).

Provided, however, that as to all taxable periods commencing after December 31, 1964, to and including all taxable periods ending on or before December 30, 1967, there shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax at the following rates:

(a) On the first one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of 1.1%;

(b) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of 2.2%;

(c) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of 3.3%;

(d) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of 4.5%;

(e) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of 5.6%;

(f) On any taxable income in excess of seven thousand dollars ($7,000.00) at the rate of 7.9%.

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965.

Collateral References

Taxation⇐959.

85 C.J.S. Taxation § 1101.

Progressive rates, validity, 27 Am. Jur. 331, Income Taxes, § 36.

Income tax as "property" tax within constitutional limitations on taxation. 11 ALR 313; 70 ALR 468 and 97 ALR 1488.

Retroactive effect of income tax. 11 ALR 518; 109 ALR 523 and 118 ALR 1153.

Domicile of taxpayer within state for only part of the taxable year as affecting computation of income tax. 93 ALR 1199 and 126 ALR 455.

Constitutionality of taxation of grantor on income of revocable trust and trust income distributable to him. 106 ALR 798; 132 ALR 785 and 143 ALR 1116.

Exemption of charitable organization from income taxes. 108 ALR 302.

Income tax in respect of amounts paid by third persons to trustee in bankruptcy of the taxpayer or garnished by his creditors. 146 ALR 62.

Year as of which amounts received by lessor in advance from lessee are subject to income tax. 146 ALR 995.

Income tax of corporate employee or officer in respect of stock of corporation sold to him at less than its value. 146 ALR 1391 and 72 ALR 2d 1352.

Trustor as subject to income tax in respect of income of irrevocable trust for charitable purposes. 148 ALR 1236.

Income tax in respect of amount of property returned to donor, or applied for his benefit, by donee, pursuant to terms of gift. 149 ALR 638.

Computation of losses or profits on sale of securities. 149 ALR 988.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

Income tax: year as of which interest should be returned by taxpayer who makes return on accrual basis. 150 ALR 754.

What is an "income tax" within deduction provisions of income tax statute. 151 ALR 983.

DECISIONS UNDER FORMER LAW

Constitutionality

Former subsection (e) of this section, as amended by chapter 40, Laws of the Extraordinary Session 1933-34, providing for a graduated and progressive surtax, in addition to the normal tax, was unconstitutional since it resulted in arbitrary discriminations between individual taxpayers. Mills v. State Board of Equalization, 97 M 13, 33 P 2d 563.

Retrospective Action

In the absence of any express provision in chapter 181, Laws of 1933, (84-4901 et seq.) making the income tax law retrospective, this act may not be given retrospective action to deduct losses sustained on an investment in bonds before the act became operative, under statutory rule of construction set forth in section 12-201. State ex rel. Whitlock v. State Board of Equalization, 100 M 72, 84, 45 P 2d 684.

84-4903. (2295.3) **Tax on nonresident.** (a) A like tax is imposed upon every person not resident of this state which tax shall be levied, collected and paid annually, at the rates specified in section 84-4902, with respect to his entire net income as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state.

History: En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963.

Collateral References

Taxation⇐1012.

85 C.J.S. Taxation § 1092.

27 Am Jur. 414, Income Taxes, § 139 et seq.

Computation of income tax on nonresident or foreign corporation. 90 ALR 484 and 156 ALR 1370.

Constitutionality of discrimination between domestic corporations as regards taxation based on fact whether their business is wholly within state, or wholly out of state, or partially within and partially without. 122 ALR 983.

State taxation in respect of business of nonresidents and of foreign corporations carried on both within and without the state. 130 ALR 1188.

84-4903.1. Collection of tax from nonresidents—withholding authorized. In order to insure collection, in the manner and to the extent pro-

vided by section 84-4907, of the income tax imposed upon the income of nonresidents by section 84-4903, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equalization as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required.

History: En. Sec. 1, Ch. 208, L. 1959.

84-4903.2. Deducting and withholding from payments to nonresidents —transmittal to state board of equalization—additional reports and information—rules and regulations—order for withholding payments. Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state board of equalization, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state board of equalization as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the board of equalization may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the board finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a copy of an order of the board terminating such withholdings as to the nonresident taxpayer.

History: En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961.

84-4903.3. Exceptions from withholding requirements. Payments made for livestock or agricultural products raised or grown outside Montana, and sold at a market within this state shall not be subject to withholding under this act.

History: En. Sec. 3, Ch. 208, L. 1959.

84-4903.4. Withholding agent. Every such person, firm, etc. required to withhold such payments under the provisions of section 84-4903.2 shall be known as a withholding agent within the meaning of this act.

History: En. Sec. 4, Ch. 208, L. 1959.

84-4903.5. Quarterly payment by withholding agent—exception. Withholding agents required to deduct and withhold tax payments under the provisions of section 84-4903.2 shall remit such payments quarterly to the state board of equalization for each quarterly period on or before the last day of the month following the close of such quarterly period.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 84-4903.2 shall amount to less than ten dollars ($10.00) in each quarterly period of any year, such withholding agent shall not be required to file the quarterly returns or to make the quarterly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.

History: En. Sec. 5, Ch. 208, L. 1959;
amd. Sec. 2, Ch. 154, L. 1961.

84-4903.6. Modification of withholding provisions. The conditions set forth in section 84-4903.2 may be modified by the state board of equalization provided:

(a) The withholding agent shall insure the board by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements in so far as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state board of equalization under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state board of equalization shall determine the amount to be withheld.

History: En. Sec. 6, Ch. 208, L. 1959.

84-4903.7. Failure to withhold or pay—penalties. If any withholding agent knowingly fails to withhold or pay to the state board of equalization any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924 with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by

section 84-4924 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

History: En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961.

84-4903.8. Board may require withholding agent to make return and pay tax at any time. If the state board of equalization in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

History: En. Sec. 8, Ch. 208, L. 1959.

84-4903.9. Amounts withheld as lien against agent—priority. In addition to the penalties above-provided, if any withholding agent shall withhold any sums required to be withheld and paid over to the state board of equalization under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

History: En. Sec. 9, Ch. 208, L. 1959.

84-4903.10. Rights of nonresident. No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state board of equalization under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

History: En. Sec. 10, Ch. 208, L. 1959.

84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor. It shall be the duty of the county assessor of every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state board of equalization after the completion of the roll on the second Monday in July but not later than September thirtieth of each year.

History: En. Sec. 11, Ch. 208, L. 1959.

84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare. It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state board of equalization with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list

shall be mailed to the state board of equalization not later than the tenth day of the month following.

History: En. Sec. 12, Ch. 208, L. 1959.

84-4903.13. Rules and regulations. The state board of equalization is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act.

History: En. Sec. 13, Ch. 208, L. 1959.

84-4904. (2295.4) **Tax is personal debt due state.** Every tax imposed by this act, and all increases, interest and penalties thereon, shall be from the time it is due and payable, a personal debt from the person or fiduciary liable to pay the same to the state of Montana.

History: En. Sec. 4, Ch. 181, L. 1933.

Collateral References

Taxation⇐93.

85 C.J.S. Taxation § 1089.

84-4905. (2295.5) **Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of a state, territory, county or municipality;

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government.

(b) Dividends from capital stock of national banks located within the state of Montana.

(c) All benefits received under the Federal Employees Retirement Act not in excess of thirty-six hundred dollars ($3600).

(d) All benefits paid under the Montana Teachers Retirement Act which are specified as exempt from taxation by section 75-2713.

(e) All benefits paid under the Montana Public Employees Act which are specified as exempt from taxation by section 68-1303.

(f) All benefits paid under the Montana Highway Patrol Retirement Act which are specified as exempt from taxation by section 31-221.

(g) Montana income tax refunds or credits thereof.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect, but with respect to which the election provided for under section 84-1501.2, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall

include actual distribution from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

History: En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965.

Compiler's Notes

Section 62 of the Internal Revenue Code of 1954, referred to in subsection (1) of this section, is compiled in the United States Code as Tit. 26, sec. 62.

Subchapter S of the Internal Revenue Code of 1954, referred to in subsection (3) of this section, is compiled in the United States Code as Tit. 26, secs. 1371 to 1377.

Collateral References

Taxation⊂⇒1079.

85 C.J.S. Taxation § 1103.

Taxable income, 27 Am. Jur. 332 et seq., Income Taxes, § 39 et seq.

Income tax in respect of salaries of public officers and employees. 11 ALR 532; 82 ALR 989; 108 ALR 1439; 114 ALR 1190; 120 ALR 1477; 122 ALR 1393 and 125 ALR 1421.

Computation of income tax in event of reorganization, merger, or consolidation of corporations. 33 ALR 523 and 78 ALR 677.

Gains from unlawful business or transaction as subject of income tax. 43 ALR 799; 51 ALR 1026 and 166 ALR 891.

Bequest to executor or trustee in lieu of commissions as subject to income tax. 50 ALR 1402.

What gains are to be treated as "dividends" within income tax law. 56 ALR 383.

Income tax in respect of benefits other than those dependent on death from life insurance policy. 61 ALR 912 and 160 ALR 1096.

Income tax in case of sale of property acquired by gift. 64 ALR 367.

Income tax in respect of amounts received by stockholder upon liquidation of corporation. 65 ALR 148.

Power to tax profits on sale of securities or other property, the interest or income from which is exempt from income tax. 71 ALR 1268.

Applicability, construction, and effect of provision of income tax act excluding from income subject to tax the value of property acquired by gift, devise, bequest, or descent. 73 ALR 1536 and 119 ALR 415.

Income tax in respect of royalties or other revenue from oil and gas or mineral lands. 74 ALR 183.

Stockholder's gain in event of reorganization, merger or consolidation of corporations as subject to tax. 78 ALR 677.

Assignment of right to future earnings, commissions, or benefits as affecting income tax of assignor. 83 ALR 88; 131 ALR 661 and 151 ALR 1401.

State income tax on resident in respect of income earned outside the state. 87 ALR 380.

Liability for income tax in respect of amount of tax paid by another. 91 ALR 1270.

Income tax in respect of compensation for services rendered to governmental or political body under contract by one not an officer or employee. 93 ALR 190.

Lessor as subject to income tax in respect of improvements or additions by lessee. 98 ALR 1207 and 138 ALR 238.

Interest on bonds or other obligations issued by political unit of state as subject of state income tax in absence of express exemption. 98 ALR 1346.

Income tax on difference between cost to donor of securities or other property and value at time of gift. 99 ALR 468.

Income tax in respect of that part of extraordinary cash dividend on stock held by trustee that is allocated to corpus as regards respective rights of life beneficiary and remainderman. 99 ALR 518.

Liability of settlor for income tax in respect of income of trust applied to relieve him of financial obligation or burden. 101 ALR 397; 109 ALR 1048; 132 ALR 819 and 158 ALR 1315.

Amount received on account of profits made by another or lost to taxpayer because of the other's tort or breach of fiduciary duty as subject to income tax. 101 ALR 1453.

Income tax in respect of exchange of properties. 102 ALR 6.

Validity and construction of state statutes imposing tax on income derived from dividends on stock of foreign corporation. 102 ALR 77 and 143 ALR 147.

Income tax in relation to stock dividends (including character of corporate distributions as stock dividends). 105 ALR 761; 130 ALR 408; 143 ALR 230; 144 ALR 1337 and 167 ALR 554.

Income tax in respect of interest accrued on purchase of mortgaged property by mortgagee. 108 ALR 441.

Corporate earnings returned to stockholding customers in proportion to business transacted as taxable income. 109 ALR 969.

Payment to one performing services as compensation subject to income tax or gift exempt therefrom. 110 ALR 285.

Premium or discount at which a corporation issues or sells corporate stock, bonds, or other obligations as income subject to tax. 112 ALR 186.

Construction and applicability of provision of income tax statute regarding exclusion from gross income of proceeds of insurance on life received on death of insured. 119 ALR 1195; 133 ALR 413 and 170 ALR 315.

Time when dividends become taxable as income to a taxpayer making his returns on a cash basis. 120 ALR 1280; 143 ALR 596; 158 ALR 1432 and 167 ALR 303.

Question whether gift is valid or a mere sham, as regards income tax of donor. 125 ALR 779.

State income tax in respect of income from national bank stock. 127 ALR 941.

Construction and application of statutory provisions taxing legatees, heirs, or trust beneficiaries on income distributable or distributed to them. 141 ALR 1055.

Taxation of income distributable or distributed to trust beneficiary as affected by assignment or disclaimer. 141 ALR 1112.

Collection on debt which had been deducted as a bad debt in return for a previous year. 143 ALR 338.

Provisions of income tax statutes as to inclusion of interest as applicable to interest on tax refunds. 147 ALR 846.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

Income tax: year as of which interest should be returned by taxpayer who makes return on accrual basis. 150 ALR 754.

Employee's acquisition of employer's commodities at discount or without cost as within gross income tax statute. 1 ALR 2d 1020.

Taxpayer's reliance on doctrine of constructive receipt to defeat assertion of tax in later year. 7 ALR 2d 735.

Dividend in kind or stock dividend as affecting corporation's income tax. 7 ALR 2d 750.

Premiums paid by employer for insurance or annuity payable to employee as taxable income of latter. 7 ALR 2d 766.

Cancellation of debt upon debtor's payment of less than amount due, or purchase by debtor of own obligation at discount, as taxable income. 7 ALR 2d 871.

Tips as taxable income. 10 ALR 2d 191.

Market value as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss. 12 ALR 2d 589.

Exchange of property in connection with sale and lease-back transactions. 26 ALR 2d 708.

Illegal business as subject to tax on gross rather than net income. 27 ALR 2d 518.

Rules concerning "application of payments" as affecting computation of income or excess profits tax. 28 ALR 2d 607.

Capital gain or loss on failure to exercise an option or privilege. 36 ALR 2d 1391.

Constitutionality, construction, and application of provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation. 42 ALR 2d 797.

Distribution by corporation to its stockholders, of stock of other corporation, as taxable income. 56 ALR 2d 474.

Law Review

Bennett, "Montana's Adoption of the Federal Definition of Income," 23 Mont. L. Rev. 105 (Fall 1961).

DECISIONS UNDER FORMER LAW

Constitutionality

This section, before the 1955 amendment, was not unconstitutional as taxing something which was not income or taxing accretion in capital asset items. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228, 231.

Breeding Animals Not a Capital Asset

In 1951 no preferential treatment was accorded by any state statute to gains from the sale or exchange of breeding animals or any other property held for productive use in a trade or business. (Sec. 1, Ch. 148, Laws 1935, R. C. M. 1947, 84-4934, repealed by Sec. 15, Ch. 260, Laws 1955.) In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 596.

Under the former statute (Sec. 1, Ch. 167, Laws 1947) requiring that the final closing return of a decedent be made on an inventory basis the same as fixed for inheritance tax purposes, unsold breeding animals valued in inventory were not to be treated as a capital asset but were to be treated as property held for sale in computing taxable income. In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 596.

Not Retrospective

In the absence of any language in the 1955 Act warranting a retrospective application the court could not decide a 1951 tax case in accordance with federal statutes and decisions. In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 597.

Purpose of Section

In enacting this section, before the 1955 amendment, the legislature was seeking tax equality. State ex rel. Anderson v.

State Board of Equalization, 133 M 8, 319 P 2d 221, 230.

Valuation of Closing Inventory

Valuation of closing inventory of estate of decedent under this section, before the 1955 amendment, by three unbiased appraisers was required by sections 91-2201, 91-2202. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

84-4906. (2295.6) **Deductions allowed in computing net income.** In computing net income, there shall be allowed as deductions:

(a) The items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible.

(b) Federal income tax paid within the taxable year.

History: En. Sec. 6, Ch. 181, L. 1933; amd. Sec. 2, Ch. 167, L. 1947; amd. Sec. 2, Ch. 260, L. 1955.

Compiler's Note

Sections 161 and 211 of the Internal Revenue Code of 1954, referred to in subsection (a) of this section, are compiled in the United States Code as Tit. 26, secs. 161, 211.

References

State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

Collateral References

Taxation⇐1031.

85 C.J.S. Taxation § 1103.

27 Am. Jur. 359 et seq., Income Taxes, § 93 et seq.

Deduction for "losses." 11 ALR 500 and 51 ALR 536.

Deduction of salaries in computing income tax on corporations. 15 ALR 1316 and 145 ALR 834.

Federal taxes as deductible in computing state income tax. 35 ALR 1457.

Deduction for loss or depreciation of good will. 49 ALR 469.

Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income. 55 ALR 1280; 67 ALR 1015; 121 ALR 697 and 135 ALR 1430.

Deductibility as business expense of contributions by corporation for benevolent, charitable, or religious purposes. 68 ALR 742 and 111 ALR 1226.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation. 71 ALR 971.

What are charitable, religious, scientific, literary or educational purposes within provisions of income tax law. 72 ALR 403.

Sum set aside in connection with self-insurance against workmen's compensation liability as deductible in computing income tax. 76 ALR 1067.

Voluntary assumption or payment of obligation as affecting right to deduction therefor. 79 ALR 977.

Interest deductible in computing income tax. 80 ALR 214 and 154 ALR 934.

Deductions in respect of leasehold. 82 ALR 332.

Expenditures for entertainment of business or professional associates as "ordinary and necessary expenses" which may be deducted under provision of federal income tax statute. 92 ALR 985.

Deductibility of loss incurred as corporate director, officer or stockholder. 99 ALR 566.

Right of one contracting to pay annuity for consideration to deduct annuity payments in making income tax return. 99 ALR 628.

Bank's right to deduct amount which it has been required by banking authorities to write down or charge off in respect of securities held by it. 100 ALR 702.

Deductibility of amount paid or expense incurred by taxpayer on account of his liability for tort, crime, or statutory violation. 104 ALR 680 and 20 ALR 2d 600.

Deductibility, in determining individual income tax of trustee or other fiduciary, of amount paid by him, or for which he is responsible, on account of an improper investment. 107 ALR 443.

Deductibility of succession, inheritance, or estate tax in computing state income tax. 108 ALR 1401.

"Obsolescence" for which deduction may be claimed. 120 ALR 446 and 160 ALR 1248.

Deductibility of loss on insurance policy as result of insurer's insolvency. 120 ALR 967.

Deductibility of penalties or interest paid or incurred by taxpayer on account of delinquent or deferred taxes. 121 ALR 1464.

Deductibility of attorneys' fees or other expenses paid or incurred by taxpayer in preparing tax returns, contesting taxes, or attempting to obtain tax refund. 122 ALR 218 and 163 ALR 1188.

Sufficiency of "charge-off" to entitle taxpayer to "bad debt" deduction. 130 ALR 212.

Deduction of loss on sale or demolition of residential property. 139 ALR 815.

Death of taxpayer during tax year as affecting method of computing income tax. 142 ALR 213.

Deductibility of commissions and other expenditures incident to the purchase or sale of securities. 142 ALR 1149.

Deduction of salaries, commissions, or bonuses to officers or employees in computing income tax. 145 ALR 834.

What is an "income tax" within deduction provisions of income tax statute. 151 ALR 983.

Computation of deduction for depreciation, obsolescence or depletion after change of basis or method thereof, as affected by amount of actual benefit from deductions for prior years. 152 ALR 876.

Interest deductible in computing income tax. 154 ALR 934.

Deductibility of expenses of one seeking public office or public or private employment. 155 ALR 128.

When deduction for traveling and living expenses while away from home on business may be claimed. 159 ALR 1217.

Right to deduct from taxable income as business expense share of profits of business which taxpayer has agreed to pay to another for property. 160 ALR 968 and 162 ALR 836.

When gain or loss to corporation in dealing in its own stock is taxable or deductible, for income tax purposes. 160 ALR 1085.

Corporation's right to deduction in respect of stock of other corporation or other assets distributed in kind to stockholders. 7 ALR 2d 750.

Premiums paid on insurance or annuity contracts for benefit of employees. 9 ALR 2d 280.

Deduction of depreciation after sale and lease back or gift and lease-back transactions. 26 ALR 2d 727.

Public policy as ground for denying deduction for federal income tax purposes. 27 ALR 2d 498.

Rules concerning "application of payments" as affecting computation of income or excess profits tax. 28 ALR 2d 683.

What constitutes medical expenses deductible for federal income tax purposes. 37 ALR 2d 551.

What constitutes transaction entered into for profit for purposes of income tax deduction. 39 ALR 2d 878.

Deduction by lessor for depreciation of leased property as affected by lessee's obligation to repair and maintain. 40 ALR 2d 440.

DECISIONS UNDER FORMER LAW

Inheritance Tax Deductible in Computing Income Tax

An inheritance tax is not a tax upon the property of the decedent's estate, but one upon the privilege of acquiring property by inheritance, and the executor of an estate, in computing the income tax of the estate, is entitled to deduct the amount of the inheritance tax paid during the tax year, since inheritance taxes are "taxes" within the meaning of this section. If the legislature had intended not to include them in the deductions it would have done so by clear and unmistakable language. State ex rel. Davis v. State Board of Equalization, 104 M 52, 58, 64 P 2d 1057.

Rule of Expressio Unius Not Applicable

The rule expressio unius est exclusio alterius not available to taxpayer to deduct, under subsection 5 of section 8, Ch. 181, Laws 1933, losses on securities sustained prior to Jan. 1, 1933, the basic date set by subsection 7 for deduction of worthless debts, there being a special reason for the inclusion of the date in subsection 7. Expressio unius rule not to apply if there is some special reason for mentioning one thing and none for mentioning the other. State ex rel. Whitlock v. State Board of Equalization, 100 M 72, 85, 45 P 2d 684.

84-4907. (2295.7) **Nonresident taxpayers.** In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and

without this state shall be allocated and apportioned under rules and regulations prescribed by the state board of equalization.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be restricted to those directly connected with the production of Montana income. A temporary resident shall be allowed those deductions allowed a resident to the extent that such deductions were actually incurred or expended in the state of Montana during the course of his residency.

History: En. Sec. 7, Ch. 181, L. 1933; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965.

References

Towne v. Towne, 117 M 453, 464, 159 P 2d 352; State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228.

Collateral References

Taxation⇐1031.
85 C.J.S. Taxation § 1099.

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the World War I Bonus Law, Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the board, in the same manner as other income tax refund claims are paid.

History: En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965.

84-4908. (2295.8) **Alternative deduction allowed in computing net income.** In the case of a resident individual, a standard deduction equal to ten per cent (10%) of adjusted gross income, prior to the allowance of deductions provided for in section 84-4906, shall be allowed if elected by the taxpayer on his return and such deduction shall be in lieu of the deductions provided for in the above-referred section 84-4906. The maximum standard deduction shall be five hundred dollars ($500.00) except in the case of a single joint return of husband and wife the maximum standard deduction shall be one thousand dollars ($1,000.00). The standard deduction shall not be allowed to a husband or wife if the tax of the other spouse is determined on the basis of net income computed without regard to the standard deduction.

History: En. Sec. 8, Ch. 181, L. 1933; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955.

Collateral References

Taxation⇐1031.
85 C.J.S. Taxation § 1098.

84-4909. (2295.9) **Nondeductible items in computing net income.** In computing net income no deductions shall in any case be allowed in respect of:

(1) Personal, living, or family expenses;

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

History: En. Sec. 9, Ch. 181, L. 1933.

Collateral References
Taxation⇐1031.

85 C.J.S. Taxation § 1099.
27 Am. Jur. 359 et seq., Income Taxes, § 93 et seq.

84-4910. (2295.10) **Exemptions.** (a) Allowance of Personal Exemption. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and Spouse. An exemption of six hundred dollars ($600.00) for the taxpayer; and an additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that

the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred dollars ($600.00) for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than six hundred dollars ($600.00), or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) years at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term "student" means an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins.

(A) Is a full-time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or

(10) An individual who

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section:

(1) The terms "brother" and "sister" include a brother or sister by the half blood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(h) Determination of Marital Status. For purposes of this part

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption deduction in the case of a nonresident taxpayer

(1) The exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

History: En. Sec. 10, Ch. 181, L. 1933; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963.

Collateral References

Taxation⇨1048.
85 C.J.S. Taxation § 1098.

84-4911. (2295.11) **Income tax involving partnership — partnership statements required.** Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

History: En. Sec. 11, Ch. 181, L. 1933; amd. Sec. 5, Ch. 260, L. 1955; amd. Sec. 4, Ch. 253, L. 1959.

Collateral References

Taxation⇨1017.
85 C.J.S. Taxation § 1096.

27 Am. Jur. 405, Income Taxes, § 169.

Nature of interest of special partner for purpose of income tax. 45 ALR 1381.

Holding period for purposes of computation of gain or loss on sale of partner's interest in firm. 7 ALR 2d 672.

84-4912. (2295.12) **Tax on beneficiaries or fiduciaries of estates or trusts.** (1) A tax shall be imposed upon either the fiduciaries or the

beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable or religious purposes, which tax shall be levied, collected and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) Income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests;

(c) Income held for future distribution under the terms of the will or trust;

(d) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct; and

(e) Income of an estate during the period of administration or settlement permitted by subdivision three (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be taxable with reference to the income of such estate or trust. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this act for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States, or any state, territory or any political subdivision thereof, or the District of Columbia; and in cases under paragraphs (d) and (e) of subdivision one (1) of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under paragraphs (a), (b) and (c) of subdivision one (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under section 84-4910, and in such cases the fiduciary of any estate or trust created by a person not a resident, or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under section 84-4907.

(4) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the

court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under the next paragraph of this section in the same or any succeeding taxable year.

In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir or beneficiary.

If the taxpayer's net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in section 84-4907, for individuals other than residents.

(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(6) Where any part of the income of a trust, other than a testamentary trust, is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor.

History: En. Sec. 12, Ch. 181, L. 1933; amd. Sec. 6, Ch. 260, L. 1955.

References

State ex rel. Davis v. State Board of Equalization, 104 M 52, 58, 64 P 2d 1057.

Collateral References

Taxation⇨1021.

85 C.J.S. Taxation § 1094.

27 Am. Jur. 406 et seq., Income Taxes, § 171 et seq.

84-4913. (2295.13) **Information agents' duties.** Every information agent shall make return to the board of complete information concerning the amount of all interest, rent, salaries, wages, premiums, annuities, dividends, compensations, remunerations, emoluments or other fixed or de-

terminable gains, profits and income, except interest coupons payable to the bearer, upon which no withholding tax has been deducted, of any person taxable under this act, of five hundred dollars ($500.00) or more in any taxable year under such regulations and in such form and manner and to such extent as may be prescribed by the board.

History: En. Sec. 13, Ch. 181, L. 1933; amd. Sec. 7, Ch. 260, L. 1955.

Collateral References
Taxation⇐1071.
85 C.J.S. Taxation § 1103.

84-4914. (2295.14) **Returns and payment of tax—penalty and interest —refunds—credits.** (1) Every single individual and every married individual filing a separate return, having a gross income for the taxable year of six hundred dollars ($600.00) or over and married individuals filing a joint return having a combined gross income for the taxable year of twelve hundred dollars ($1,200.00) or over shall be liable for a return to be filed on such forms and according to such rules and regulations as the board of equalization may prescribe.

(2) In accordance with instructions set forth by the board, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939, and 84-4943 as amended shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943 as amended and/or any payment made by reason of an estimated tax return provided for in section 84-4939 as amended, provided however, the tax so computed is greater by one dollar ($1.00) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar ($1.00) the amount of the income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the board shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of six per centum (6%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud,

there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars ($2.00). Interest will be computed at the rate of six per centum (6%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six per centum (6%) per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963.

Collateral References

Taxation⇐1079, 1096, 1097.
85 C.J.S. Taxation §§ 1102, 1106, 1109.
27 Am. Jur. 430, Income Taxes, § 218 et seq.

84-4915. (2295.15) **Exemption allowed nonresident—effect of changing resident status.** If a taxpayer changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, during the taxable year, he shall file a return covering the fraction of the year during which he was a resident. The exemptions provided in section 84-4910 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state; abandoning his residence in the state and establishing a residence elsewhere, must file a return on the fractional basis. If he obtains employment outside the state, without abandoning his Montana residence then income from such employment is taxable in Montana.

History: En. Sec. 15, Ch. 181, L. 1933; amd. Sec. 9, Ch. 260, L. 1955; amd. Sec. 6, Ch. 253, L. 1959.

Collateral References

Taxation⇐1012.
85 C.J.S. Taxation § 1092.

84-4916. (2295.16) **Repealed—Chapter 260, Laws of 1955.**

Repeal

This section (Sec. 16, Ch. 181, L. 1933), relating to partnership returns, was repealed by Sec. 15, Ch. 260, Laws 1955.

84-4917. (2295.17) **Return of fiduciary.** Every fiduciary (except receivers appointed by authority of law in possession of part only of the property of a taxpayer) shall make a return for the individual or estate or trust from whom he acts.

Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to taxpayers.

History: En. Sec. 17, Ch. 181, L. 1933; amd. Sec. 10, Ch. 260, L. 1955.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.
27 Am. Jur. 430, Income Taxes, § 218 et seq.

What constitutes a trust for purpose of income tax assessments. 113 ALR 457.

Trustor as subject to income tax in respect of income of irrevocable trust for charitable purposes. 148 ALR 1236.

84-4918. (2295.18) **Repealed—Chapter 260, Laws of 1955.**

Repeal

This section (Sec. 18, Ch. 181, L. 1933), relating to a change in the basis for computing income, was repealed by Sec. 15, Ch. 260, Laws 1955.

84-4919. (2295.19) **Time for filing—affidavit—forms.** Returns shall be made to the board on or before the fifteenth day of the fourth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April in each year. The board may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of persons who are abroad, no such extension shall be granted for more than six (6) months. Such returns shall set forth such facts as the board may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the board upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required; provided, that every taxpayer liable for a tax under this law shall pay a minimum tax of one dollar ($1.00).

History: En. Sec. 19, Ch. 181, L. 1933; amd. Sec. 1, Ch. 105, L. 1935.

Cross-Reference

Certified copies of returns, secs. 84-732 to 84-735.

References

Stewart v. State, 135 M 323, 340 P 2d 151, 152.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.

What amounts to "reasonable cause" for failure to file, or delay in filing, tax return. 3 ALR 2d 617.

Sufficiency of return to start running of statute of limitations. 3 ALR 2d 647.

84-4920. (2295.20) **Revision of return—time for determining tax—examination of records and persons.** If, in the opinion of the board, any return of a taxpayer is in any essential respect incorrect, it may revise such return, or if any taxpayer fails to make return as herein required, the board is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession, and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayer. Except in the case of willfully false or fraudulent return with intent to evade the tax, the amount of tax due under any return shall be determined by the board within five (5) years after the return was made, and the board thereafter shall be barred from revising any such returns or recomputing the tax due thereon and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period notwithstanding the provisions of section 84-4929. In the case of a willfully false or fraudulent return, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due, and where no return has been filed, the tax may be assessed at any time.

The board, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person

where information has been obtained, may also examine or cause to have examined, by any agent or representative designated, by it for that purpose, any books, papers or records of memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

History: En. Sec. 20, Ch. 181, L. 1933; amd. Sec. 1, Ch. 103, L. 1955.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.

DECISIONS UNDER FORMER LAW

Construction Prior to 1955 Amendment

The provision of this section, before the 1955 amendment, commanding a particular act to be done for the protection of the taxpayer, viz., assessment within three years, must be construed in favor of the taxpayer. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 224.

This section, before the 1955 amendment, did not constitute a statute of limitations, but rather a limitation upon the authority of the state board of equalization to reassess returns after the expiration of three years from the date the return is made. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 226.

Limitation on Reassessment

Although this section does not constitute a statute of limitations, it is a limitation upon the authority of the board of equalization to reassess returns after the expiration of three years from the date the return was filed. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

84-4920.1. Suspension of running of statute of limitations—grounds. The running of the above statute of limitations shall be suspended during any period that the federal statute of limitations for collection of federal tax has been suspended by (1) written agreement signed by the taxpayer or, (2) when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations, and for one (1) additional year. If the taxpayer omits from net income an amount properly includable therein which is in excess of twenty-five (25%) per cent of the amount of net income stated in the return a proceeding in court may be begun within five (5) years after the return was filed.

History: En. Sec. 2, Ch. 103, L. 1955.

84-4921. (2295.21) **Oaths may be administered by board members and employees.** The board and each assistant, or deputy, may administer an oath to any person, or take the acknowledgment of any person in respect to any report or return required by or pursuant to this act, or by the rules and regulations of the board.

History: En. Sec. 21, Ch. 181, L. 1933.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.

84-4922. (2295.22) **Revision—application — hearing — adjustment.** If an application for revision be filed with the board by a taxpayer within five (5) years from the original due date of the return the board shall grant a hearing thereon, and if it is made to appear upon any such hearing by evidence submitted to it or otherwise, that any such computation

includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the board shall resettle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of its determination thereon to the taxpayer.

History: En. Sec. 22, Ch. 181, L. 1933; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.

DECISIONS UNDER FORMER LAW

Filing of Claim

Respondent paid additional tax under protest on June 12, 1953. Within the two years granted by this section, prior to 1955 amendment, he applied for a revision, filing claim on July 24, 1954, setting forth the contended invalidity of the assessment. The claim was filed on a form provided by the board of equalization for refund of tax illegally collected. This was a sufficient compliance with the statute. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

84-4923. (2295.23) **Repealed—Chapter 212, Laws of 1957.**

Repeal

This section (Sec. 23, Ch. 181, L. 1933; Sec. 2, Ch. 58, L. 1955), relating to review of board's findings on application for revision, was repealed by Sec. 2, Ch. 212, Laws 1957.

84-4923.1. Review by court. The determination of the state board of equalization may be reviewed in the district court for Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state board of equalization within six (6) months after the receipt of notice of the decision of the state board of equalization. Upon the serving of summons upon the state board of equalization as in civil action, the cause shall proceed as other civil cases. Service upon the state board of equalization may be made by serving one copy upon the secretary of the state board of equalization or one copy upon the chairman of the state board of equalization. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957.

Collateral References

Taxation⇐1087.
85 C.J.S. Taxation § 1105.

DECISIONS UNDER FORMER LAW

Court without Authority to Return Tax Paid under Protest

Under former section 84-4923 the court was without power to render a judgment for the return of the tax paid under protest. State ex rel. Davis v. State Board of Equalization, 104 M 52, 62, 64 P 2d 1057.

Review of Reassessment

Where board of equalization rejected claim of taxpayer, on August 18, 1954, for return of illegally collected tax, it constituted the determination of the board upon the application for revision made by respondent and was reviewable by district court under Sec. 23, Ch. 181, Laws 1933, where respondent applied for writ of certiorari on September 11, 1954, within the thirty-day limitation provided in section 23. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

84-4924. (2295.24) **Penalties for violations of act.** (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income or pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to five (5) per centum thereof, but not less than two dollars ($2.00), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of six per centum (6%) per annum shall be added to the tax for the entire period it remains unpaid.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than two dollars ($2.00), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the board thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(4) The certificate of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 24, Ch. 181, L. 1933; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 5, Ch. 201, L. 1963.

Collateral References

Taxation⇦1103.

85 C.J.S. Taxation § 1107.

27 Am. Jur. 452 et seq., Income Taxes, § 250 et seq.

When running of limitations against criminal prosecutions for violation of income tax act begins. 76 ALR 1549.

Constitutionality, construction, and effect of specific provisions of state corporate income tax law to prevent tax evasion. 92 ALR 1073.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

DECISIONS UNDER FORMER LAW

Constitutionality

The double penalty imposed under subsection (2) of this section, before the 1955 amendment, did not violate sections 20, 27, article III of the Montana constitution as an excessive fine or the taking of property without due process of law. State ex rel. Hardy v. State Board of Equalization, 133 M 43, 319 P 2d 1061, 1063, 1065.

Inadvertent Failure To Pay when Filing Return

The provision of this section, prior to the 1955 amendment, that any person failing to pay tax on due date was allowed sixty days in which to pay tax with only a 5 per cent penalty did not prevent assessment of the 100 per cent penalty after the termination of such period, notwithstanding the fact that the taxpayer failed to include payment due to mistake, inadvertence, and excusable neglect. Stewart v. State, 135 M 323, 340 P 2d 151.

84-4925. (2295.25) **Repealed—Chapter 227, Laws of 1957.**

Repeal

This section (Sec. 25, Ch. 181, L. 1933; Sec. 1, Ch. 78, L. 1951), relating to payment, penalty, interest, and refund of excess payment of tax, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4926. Deferment of collection of income tax of persons in military service—statute of limitations suspended. The collection from any person in the military service, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state of Montana on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six (6) months after the termination of his period of military service, if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this act, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual, the collection of such tax is deferred under this section, and for an additional period of one (1) year, beginning with the day following the period of military service.

History: **En. Sec. 1, Ch. 181, L. 1943.**

Compiler's Note

The Soldiers' and Sailors' Civil Relief Act of 1940, as amended October 6, 1942, referred to in this section, is compiled in the United States Code as Tit. 50, Appx. secs. 513 to 517, 525 to 527, 530 to 536, 540 to 548, 560, 569, 572, 574, 590.

Collateral References

Taxation⇨1100.
85 C.J.S. Taxation § 1107.

84-4927. District court may grant stay of enforcement—no fines and penalties accrue during stay. Any such person may, during his period of military service, or within six (6) months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by such person prior to his period of military service, or in respect of any such obligation or liability, whether falling due prior to or during his period of military service. Any district court of the state of Montana, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability, or to pay such tax or assessment has not been materially affected by reason of his military service, may grant a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application, if made after such service, for a period of time equal to the period of military service of the applicant, or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid, at the date of termination of such

period of military service or from the date of application as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such tax obligation or tax liability or assessment, if paid when due, and subject to such other terms as may be just.

When any court has granted a stay, as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability or assessment in respect of which such stay was granted.

History: **En. Sec. 2, Ch. 181, L. 1943.**

Collateral References

Taxation⇨1096.
85 C.J.S. Taxation § 1107.

84-4928. (2295.26) **Levy upon and sale of property for payment of income taxes.** If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the board and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the board a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the board shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

History: **En. Sec. 26, Ch. 181, L. 1933; amd. Sec. 1, Ch. 172, L. 1947.**

Collateral References

Taxation⇨1100.
85 C.J.S. Taxation § 1107.

References

Stewart v. State, 135 M 323, 340 P 2d 151, 154.

84-4929. (2295.27) **Action by attorney general.** Action may be brought at any time by the attorney general of the state at the instance of the board, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: **En. Sec. 27, Ch. 181, L. 1933.**

Collateral References
Taxation⇐1100.
85 C.J.S. Taxation § 1107.

84-4930. (2295.29) **Board authorized to make rules and regulations.** The board is hereby authorized to make such rules and regulations and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this act.

History: **En. Sec. 29, Ch. 181, L. 1933.**

Collateral References
Taxation⇐1071.
85 C.J.S. Taxation § 1103.

84-4931. (2295.30) **Divulging information unlawful—exceptions—penalty.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the board or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding under the provisions of this act, or any other taxing act, to which the board is a party, or on behalf of any party to any action or proceedings under the provisions of this act or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the board orders them to be destroyed.

(2) Any offense against subdivision one (1) of this section shall be punished by a fine not exceeding one thousand dollars ($1,000.00), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

(3) Notwithstanding the provisions of this section, the board may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

History: En. Sec. 30, Ch. 181, L. 1933; amd. Sec. 1, Ch. 110, L. 1951.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.
Publicity of returns, 27 Am. Jur. 430, Income Taxes, § 220.
Constitutionality, construction, and application of statutory provisions regarding publicity or confidential and privileged character of income tax information or returns. 151 ALR 1049.

84-4932. (2295.31) **Construction of net income.** For the purpose of raising revenue the net income required to be shown on returns under this act and taken as the basis for determining the tax hereunder shall not be classified or held or construed to be property. And all income, except what has been expressly exempted under the provisions of this act and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States, shall be included and considered in determining the net income of taxpayers within the provision of this act.

History: En. Sec. 31, Ch. 181, L. 1933.

References

Johnson v. Meagher County, 116 M 565, 568, 155 P 2d 750.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.

84-4933 to 84-4935. (2295.32 to 2295.34) **Repealed—Chapter 260, Laws of 1955.**

Repeal

These sections (Sec. 1, Ch. 148, L. 1935), relating to gains or losses, were repealed by Sec. 15, Ch. 260, Laws 1955.

84-4936. Income tax statute — reference — definition. Whenever the phrase "this act" appears herein, it refers to Chapter 49 of this Title, relating to personal income taxes and all acts amendatory thereof and supplementary thereto.

History: En. Sec. 1, Ch. 28, L. 1941.

Collateral References

Taxation⇐965.
85 C.J.S. Taxation § 1089.

84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for

income taxes imposed by and paid to another state or country on income taxable under this act.

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient;

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this act;

(3) The allowable credit shall be computed by formula to be prescribed by the board.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959.

Credit for income tax paid to another state or country, constitutionality of statutory provisions allowing. 12 ALR 2d 359.

Collateral References

Taxation⇨1005.
85 C.J.S. Taxation § 1096.

84-4938. Furnishing copy of federal return. Every taxpayer shall upon request of the board, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. Every taxpayer shall, upon request of the board, furnish a copy of any federal revenue agent's report made upon any audit or adjustment of the federal income tax return. The board shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the board, upon the request of the taxpayer.

History: En. 84-4938 by Sec. 11, Ch. 260, L. 1955.

84-4939. Declaration of estimated tax. (1) Every individual, except farmers, ranchers or stockmen, shall, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax for the taxable year, if his net income from sources other than wages, salaries, bonus, or other emolument can reasonably be expected to equal or exceed his net income from wages, salaries, bonus or other emolument, which wages, salaries, bonus or other emolument are subject to withholding.

(2) In the declaration required under subsection (1) of this section the individual shall state:

(a) The amount which he estimates as the amount of tax under section 84-4902 for the taxable year;

(b) The amount which he estimates will be withheld from wages paid by his employer if said individual is an employee.

(c) The excess of the amount estimated under subparagraph (a) over the amount estimated under subparagraph (b) which excess for purposes of this section shall be considered the estimated tax for the taxable year.

(d) Such other information as may be prescribed in rules and regulations promulgated by the board.

(3) The declaration required under subsection (1) of this section shall be filed with the board on or before April fifteenth of the taxable year

except that if the requirements of subsection (1) of this section are first met:

(a) After April first and before October first of the taxable year the declaration shall be filed on or before October fifteenth of the taxable year.

(b) After October first of the taxable year the declaration shall be filed on or before February fifteenth of the succeeding taxable year.

Provided that the declaration required to be filed during 1955 may be filed not later than October 15, 1955 if the requirements of subsection (1) of this section are fulfilled at any time prior to October 2, 1955.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules and regulations prescribed by the board.

(5) If on or before February fifteenth of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on their return as payable then under rules and regulations prescribed by the board.

(a) If the declaration is not required to be filed during the taxable year but is required to be filed on or before such February fifteenth, such return shall for the purposes of this section be considered as such declaration; and

(b) If the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February fifteenth.

(6) The board shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension shall be for more than six (6) months.

(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

History: En. 84-4939 by Sec. 12, Ch. 260, L. 1955.

Collateral References

Taxation⇐1079.
85 C.J.S. Taxation § 1102.

84-4940. Installment payments of estimated tax. (1) Estimated tax provided for in section 84-4939 shall be paid as follows: [a] If the declaration is filed on or before April fifteenth of the taxable year the estimated tax shall be paid in two (2) equal installments. The first installment shall be paid at the time of filing of the declaration and the second or last installment shall be paid on October fifteenth of the taxable year:

(b) If the declaration is filed after April fifteenth and not after October fifteenth of the taxable year and is not required by subsection (3) of section 84-4939 to be filed on or before April fifteenth of the taxable year the estimated tax shall be paid at the time of filing of the declaration;

(c) If the declaration is filed after October fifteenth of the taxable year and is not required by subsection (3) of section 84-4939 to be filed

on or before October fifteenth of the taxable year, the estimated tax shall be paid in full at the time of filing of the declaration.

(d) If the declaration is filed after the time prescribed in section 84-4939 including cases where extensions of time have been granted paragraphs (b) and (c) of this subsection shall not apply and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subsection (3) of section 84-4939 and the remaining installments shall be paid at the times at which and in the amounts in which they would have been payable if the declaration had been so filed. Provided that payments required under this section for purposes of the taxable year 1955 shall be limited to fifty per cent (50%) of the total estimated tax for 1955.

(2) If any amendment of a declaration is filed after April fifteenth and before October fifteenth of the taxable year the remaining installment, if any, shall be ratably increased or decreased as the case may be; to reflect the respective increase or decrease in the estimated tax by reason of such amendment and if any amendment is made after October fifteenth of the taxable year any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(3) At the election of the individual any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(4) Payment of the estimated tax or any installment thereof shall be considered payment on account of the tax for the taxable year.

(5) The application of this section of this act to taxable years of less than twelve (12) months shall be as prescribed in the rules and regulations promulgated by the board.

(6) In the application of this section of this act to taxpayers reporting income on a fiscal year basis there shall be substituted for the dates specified therein the months corresponding thereto.

History: En. 84-4940 by Sec. 13, Ch. 260, L. 1955.

Collateral References

Taxation⇐1096.
85 C.J.S. Taxation § 1106.

84-4941. Constitutionality. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act.

History: En. 84-4941 by Sec. 14, Ch. 260, L. 1955.

84-4942. Definitions. When used in this act:

(a) The word "board" means the state board of equalization.

(b) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service as a member of the armed forces of the United States;

(2) for agricultural labor as defined in paragraph (c) following;

(3) for domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority;

(4) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars ($50.00) or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if;

(A) on each of some twenty-four (24) days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business.

(B) such individual was regularly employed (as determined under subparagraph (a) [A] by such employer in the performance of such service during the preceding calendar quarter.

(5) for services by a citizen or resident of the United States for a foreign government or an international organization.

(6) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(7) (A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(8) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(9) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including, but not limited to, life insurance, hospitalization insurance for the employee or dependents, and employees' club activities.

(c) The term "agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(d) Payroll period—For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer.

(e) Employee—For purposes of this chapter, the term "employee" includes an officer, employee or elected public official of the United States, the state of Montana, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(f) Employer—The term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages.

History: En. Sec. 1, Ch. 246, L. 1955.

84-4943. Deduction and withholding of tax from wages—amount. Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the board. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957.

84-4944. Repealed—Chapter 227, Laws of 1957.

Repeal

This section (Sec. 3, Ch. 246, L. 1955), relating to the adjustment and amount of wages exempt, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4945. Employer liable for amounts deducted and withheld. Every employer shall be liable for the amounts hereinbefore required to be deducted and withheld, and such amounts shall be considered as a tax and with respect thereto the employer shall be considered a taxpayer. If the employer fails to deduct and withhold the amounts specified in this act, and thereafter the tax against which such deducted and withheld amounts would have been credited, is paid, the amounts so required hereby to be deducted and withheld shall not be collected from the employer.

History: En. Sec. 4, Ch. 246, L. 1955.

84-4946. Quarterly payment by employer—exception. On or before the last day of the months of April, July, October, and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of this act shall file a return in such form and containing such information as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of this act upon the wages of all employees of any employer shall amount to less than ten dollars ($10.00) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments last hereinabove provided for, but in lieu thereof such employer shall, on or before February fifteenth of the year next succeeding that in which such wages were paid, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by said employer from all wages paid during the preceding calendar year.

History: En. Sec. 5, Ch. 246, L. 1955.

84-4947. Amount withheld considered as tax collected. All amounts deducted and withheld shall be considered as a tax collected under the provisions of this act, and no employee shall have any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid to the state of Montana in compliance or intended compliance with this act.

History: En. Sec. 6, Ch. 246, L. 1955.

84-4948. Annual withholding statement. Every employer shall, prior to the fifteenth day of February in each year furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of this act. Said statement shall contain such additional information and shall be in such form as the board shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

History: En. Sec. 7, Ch. 246, L. 1955.

84-4949. Repealed—Chapter 227, Laws of 1957.

Repeal

This section (Sec. 8, Ch. 246, L. 1955), relating to the short form return, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4950. Filing of annual statement by employer—duty. Every employer shall, on or before the fifteenth day of February in each year file with the board a statement in such form and summarizing such information as the board shall require, including the total wages paid to each employee during the preceding calendar year or any part thereof, and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of this act. Said annual statement filed by an employer shall, with respect to the wage payments reported therein, constitute full compliance with the requirements of section 84-4913, relating to the duties of information agents, and no additional information return shall be required with respect to such wage payments.

History: En. Sec. 9, Ch. 246, L. 1955.

84-4951. Amounts withheld, held in trust for state—warrants to collect. Every employer who deducts and withholds any amounts under the provisions of this act shall hold the same in trust for the state of Montana, and if any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in section 84-4928, with respect to warrants relating to unpaid income taxes.

History: En. Sec. 10, Ch. 246, L. 1955.

84-4952, 84-4953. Repealed—Chapter 227, Laws of 1957; Chapter 126, Laws of 1963.

Repeal

These sections (Secs. 11, 12, Ch. 246, L. 1955), relating to the inclusion of withholding tax deductions in gross income and the income tax withholding fund, were repealed by Sec. 4, Ch. 227, Laws 1957; Sec. 8, Ch. 126, Laws 1963.

84-4954. Violations by employer—penalties. If any employer shall fail to pay over to the state the tax deducted and withheld under the provisions of this act, or shall fail to file or furnish any statement herein provided for, within the time herein prescribed therefor, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924, with respect to failure to make a return of income or to pay any income tax; and any individual, corporation, or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924, with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

History: En. Sec. 13, Ch. 246, L. 1955.

84-4955. Rules and regulations—remedies for administration, enforcement and collection. The board is hereby empowered to adopt rules and regulations for the carrying out of the provisions of this act and the enforcement thereof. All of the remedies available to the state of Montana for the administration, enforcement and collection of income taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of this act.

History: En. Sec. 14, Ch. 246, L. 1955.

84-4956. Credits and refunds. If the board of equalization discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years

from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state board of equalization shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the board disapproves a claim for refund, review of the determination of the board may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar ($1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963.

84-4957. Repealed—Chapter 126, Laws of 1963.

Repeal

This section (Sec. 1, Ch. 211, L. 1957), relating to the income tax refund account, was repealed by Sec. 8, Ch. 126, Laws 1963.

84-4958. Release of lien or partial discharge of property. (1) The board of equalization shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The board of equalization may issue a certificate of release if it determines that the lien is unenforceable.

(2) The board of equalization may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the board of equalization, of the interest of the state of Montana in the part to be discharged; or

(c) The board of equalization determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 130, L. 1965.

CHAPTER 50

INHERITANCE TAX

See Title 91, Wills, Succession, Probate and Guardianship, Sections 91-4401 to 91-4423, 91-4425 to 91-4433, 91-4435 to 91-4467.

CHAPTER 51

INSURANCE COMPANIES GENERAL PROPERTY TAX

Section 84-5101. Assessment and taxation of insurance companies.
84-5102. Method of computing taxable property.
84-5103. Taxation of credits of insurance companies—other property.

84-5101. (2111) **Assessment and taxation of insurance companies.** Every insurance company organized under the laws of the state of Montana shall be assessed and taxed upon its real estate and personal property at the same rate and in the same manner as other property is assessed and taxed in this state.

History: En. Sec. 1, Ch. 64, L. 1915; re-en. Sec. 2111, R. C. M. 1921.

Collateral References

Taxation ⇦137.
84 C.J.S. Taxation § 162.
51 Am. Jur. 809, Taxation § 915 et seq.

Taxation of insurance reserves. 13 ALR 186 and 78 ALR 562.

Permissible classification of foreign companies which will justify discrimination in taxes among them. 83 ALR 468.

Consideration paid for annuity obligation as "premium" within contemplation of tax statutes. 109 ALR 1060 and 135 ALR 1248.

What organizations are within provisions of tax statutes relating to insurance companies. 146 ALR 454.

84-5102. (2112) **Method of computing taxable property.** In computing the taxable property of insurance companies organized under the laws of this state, there shall be deducted therefrom the value of the real property on which the company pays taxes, such real estate being assessed to the company as other real estate; also the legal reserve required by the laws of this state, or by the insurance department thereof, for the protection of policyholders; also all assets not admitted as such by the state, or by the insurance department thereof; also such debts and liabilities as may be due or owing by such company.

History: En. Sec. 2, Ch. 64, L. 1915; re-en. Sec. 2112, R. C. M. 1921.

Collateral References

Taxation ⇦387.
84 C.J.S. Taxation § 425.

84-5103. (2112.1) **Taxation of credits of insurance companies—other property.** All property other than credits of insurance companies required by law to have and maintain a legal reserve for the protection of policyholders shall be assessed, classified and taxed as other property of like character. Credits, including evidence of indebtedness secured by mortgages, less legal reserves for the protection of policyholders and other indebtedness shall be classified and taxed on the basis of thirty per centum (30%) of full cash value as thus ascertained.

History: En. Sec. 1, Ch. 63, L. 1929.

Discrimination

Where there was no evidence in an action by a national bank to recover taxes paid under protest that money owned by insurance companies came in competition with plaintiff's business, its contention that it was being discriminated against by this section, relating to the taxation of moneyed capital of such companies, in violation of section 5219, United States Revised Statutes was not sustained. Merchants' Nat. Bank of Glendive v. Dawson County, 93 M 310, 19 P 2d 892.

CHAPTER 52

LIVESTOCK TAXATION

Section 84-5201. Livestock, where assessed.
84-5202. Assessment of migratory livestock.
84-5203. Duty of owner when livestock is removed from home county to another county.
84-5204. Apportionment of taxes upon migratory livestock.
84-5205. Collection and disposition of proceeds of taxes.
84-5206. Distribution of migratory stock fund.
84-5207. Removal of livestock after assessment.
84-5208. Penalty for violation of law.
84-5209. Additional tax levy to pay expense of enforcing stock laws.
84-5210. State board of equalization to prescribe levy.
84-5211. Limitation of levies—livestock moneys.
84-5212. Use of moneys arising from taxes prescribed in preceding section.
84-5213. Transmission of taxes from county to state treasurer.
84-5214. Levy for bounty moneys—use of proceeds.
84-5215. Bounties, when paid.
84-5216. Tax levy for bounties on predatory animals.
84-5217. Signers of petition—time for presenting—limitation on bounties—bounty inspectors.
84-5218. County bounty fund.
84-5219. Presentation of skins—affidavit.
84-5220. County clerk to provide forms.
84-5221. Existing bounty laws not affected.

84-5201. (2068) **Livestock, where assessed.** Livestock belonging to a permanent resident of the state must not be listed or assessed while such stock is in transit, nor until it arrives in the county where the person owning the same resides, and must be listed and assessed in such county. If such livestock runs at large in a county other than the one in which such owner resides, it must be listed and assessed in such county.

History: En. Sec. 3720, Pol. C. 1895; re-en. Sec. 2530, Rev. C. 1907; re-en. Sec. 2068, R. C. M. 1921.

Cross-Reference

Horses on open range, assessment by county assessor, sec. 46-1809.

References

Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Small, 35 M 288, 294, 88 P 953.

84-5202. (2069) **Assessment of migratory livestock.** All livestock pastured, ranged or grazed, or which does pasture, range or graze in any county or counties of the state during any year, other than the county wherein the said livestock is usually kept by the owner thereof on lands claimed by him, to be known as the home county, shall be assessed for taxation, and such tax collected in the county in which it is found at the time fixed by law for the assessment of all property in the state, at the rate of levy of the home county, and it shall be the duty of the owner thereof, or his agent, at the time of the assessment of such livestock, to make and deliver to the assessor of the county where such livestock is found, and to the assessor of the home county, a written statement, under oath, showing the different kinds of such livestock within such county belonging to him or under his charge, with their marks and brands, and showing the full time during the current year that such livestock and every part, portion and kind thereof, has been and will be, within any county or counties, other than the home county, and such livestock and the owner thereof, shall be liable to the said county or counties for the taxes thereon, as other property is liable, and the taxes thereon shall be apportioned between the home county and such other county or counties as hereinafter provided; provided, however, that the tax on all livestock fed in feeding pens or other enclosures in any county or counties other than the home county of such livestock, shall not be apportioned as provided herein, but shall be paid in full to the county treasurer of the home county of such livestock.

History: En. Sec. 1, Ch. 125, L. 1909; amd. Sec. 1, Ch. 177, L. 1921; re-en. Sec. 2069, R. C. M. 1921.

Enclosure

The fencing of a 2,000 acre tract does not constitute an "enclosure" within the meaning of this section. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1014.

Livestock Moved for Winter Feeding

Under the provisions of this section, livestock moved from one county within the state to a neighboring county for winter feeding and not for the purpose of running at large or grazing in the latter county, is assessable in its home county and not in the county in which the feeding is done; the provisions of section 84-5203, relating to migratory stock having no application to animals falling within the proviso in this section. Peterson v. Granite County, 76 M 214, 216 et seq., 245 P 946.

Purpose

The thrust of this section is directed at livestock operations involving pasturing or grazing livestock in counties other than the one in which the owner resides. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1015.

Seizure and Sale

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960, county had a lien for the tax under sections 84-3807 and 84-3808 and properly seized and noticed up for sale on May 7, 1963, as the lien was not limited to 1960 cattle by section 84-4202, as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1015.

Situs for Taxation

Cattle of nonresident taxpayer grazing on lands other than in the home county of the taxpayer at the time fixed by law for assessment were taxable in that other county in accordance with this section although the acreage upon which such cattle grazed was enclosed by a fence. O'Brien v. Ross, 144 M 115, 394 P 2d 1013, 1015.

Collateral References

Taxation⇐261, 331.
84 C.J.S. Taxation §§ 317, 400.

84-5203. (2070) **Duty of owner when livestock is removed from home county to another county.** Whenever such livestock is removed, kept, fed, or pastured, or permitted to range or graze, or does range or graze in any

county other than its home county, the owner thereof, or the person in charge, or his agent, shall, within fifteen days from the time any such stock enters such other county, deliver to the assessor of such county, and to the assessor of the home county, a written statement, under oath, similar in all respects, as far as practicable, to the statement required at the time of the assessment.

History: En. Sec. 2, Ch. 125, L. 1909; re-en. Sec. 2070, R. C. M. 1921.

Livestock Moved for Winter Feeding

Under section 84-5202, livestock, moved from one county within the state to a neighboring county for winter feeding and not for the purpose of running at large or grazing in the latter county, is assessable in its home county and not in the county in which the feeding is done; the provision of this section relating to migratory stock having no application to animals falling within the proviso in section 84-5202. Peterson v. Granite County, 76 M 214, 245 P 946.

Collateral References

Taxation⇐329.
84 C.J.S. Taxation § 396.

84-5204. (2071) **Apportionment of taxes upon migratory livestock.** Each county of the state in which livestock is kept, fed, or pastured, or in which it is permitted to range or graze, or does range or graze, is entitled to receive the taxes on said property, in proportion to the time that the same is in such county, and the county to which said livestock is so removed shall be entitled to receive and recover from the home county the taxes collected on said stock, in proportion to the time for the current year such stock is so kept, fed, or pastured, or does range, or graze in the county other than where said livestock is assessed.

History: En. Sec. 3, Ch. 125, L. 1909; re-en. Sec. 2071, R. C. M. 1921.

84-5205. (2072) **Collection and disposition of proceeds of taxes.** The assessor shall indicate on the assessment roll livestock which has or will be kept, fed, pastured, ranged, or grazed in more than one county, and the treasurer, on collecting the taxes thereon in the county in which the same is assessed, shall remit the portion levied for state purposes, as in case of other taxes levied by the state of Montana, and he shall place the remainder of the tax in a separate fund, known as the migratory stock fund, which shall be subject to distribution as hereinafter provided.

History: En. Sec. 4, Ch. 125, L. 1909; re-en. Sec. 2072, R. C. M. 1921.

Collateral References

Taxation⇐411, 916.
84 C.J.S. Taxation § 456; 85 C.J.S. Taxation § 1066.

84-5206. (2073) **Distribution of migratory stock fund.** At the regular meeting in July of the board of county commissioners, the assessor of the county shall transmit to the board all information filed with him or in his possession concerning stock assessed, wherein the taxes are to be apportioned between two or more counties, and the board of county commissioners shall proceed, on receipt of such information, to distribute said migratory stock fund, in proportion to the time said stock has been in each of such counties, as above provided, and order warrants drawn in favor of the counties entitled to receive a portion of the said taxes against such migratory stock fund, and the portion remaining, belonging to the home county, shall be distributed on the order of the board of county commissioners to the

proper fund, according to the tax levy made during the year such assessment was levied, and the board shall make a like distribution of all moneys received from other counties under the provisions of this act.

History: En. Sec. 5, Ch. 125, L. 1909; re-en. Sec. 2073, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1945.

84-5207. (2074) **Removal of livestock after assessment.** No county, by reason of the removal of stock from the home county after assessment, shall be entitled to receive a portion of the taxes collected by reason of said livestock being fed, pastured, ranged, or grazed in a county other than the home county because of the change of ownership of said livestock at the time of its removal, or while being fed or pastured in a pen, field, or enclosure.

History: En. Sec. 6, Ch. 125, L. 1909; re-en. Sec. 2074, R. C. M. 1921.

84-5208. (2075) **Penalty for violation of law.** Any person or persons, company, or corporation, who is the owner or has in charge any livestock within this state, who refuses to make the statement or statements as provided in section 84-5202, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars.

History: En. Sec. 7, Ch. 125, L. 1909; re-en. Sec. 2075, R. C. M. 1921.

Collateral References
Taxation⇨571.
84 C.J.S. Taxation § 684.

84-5209. (2076) **Additional tax levy to pay expense of enforcing stock laws.** In addition to appropriations made for such purposes, a tax is hereby authorized and directed to be levied on all livestock in this state, for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the stock laws of the state of Montana and for the payment of bounties on wild animals, as hereinafter specified.

History: En. Sec. 1, Ch. 127, L. 1915; re-en. Sec. 2076, R. C. M. 1921.

Collateral References
Taxation⇨70.
84 C.J.S. Taxation § 83.

84-5210. (2077) **State board of equalization to prescribe levy.** The state board of equalization is hereby empowered and it is made its duty, annually, to prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the various boards herein named shall have the right to recommend to said state board of equalization the amount of such levy.

History: En. Sec. 2, Ch. 127, L. 1915; re-en. Sec. 2077, R. C. M. 1921.

Collateral References
Taxation⇨297.
84 C.J.S. Taxation § 352.

84-5211. (2078) **Limitation of levies—livestock moneys.** The amount of such levy shall not in any event exceed one mill upon the assessed valuation of sheep and one and one-half mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the livestock commission of Montana, including salaries,

office expense, detective expense, expense of prosecution, travel, and all incidental expense, and a separate levy of not exceeding one and one-half mills on all livestock for the use of the livestock sanitary board to be placed in the earmarked revenue fund for the payment of indemnity for animals slaughtered, and for salaries and expenses incurred in investigating, controlling and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance; provided further that the state treasurer and state controller, at the written request of the livestock sanitary board shall set aside in a separate account in the earmarked revenue fund such moneys as may be available and requested, which moneys shall be expended only when the livestock sanitary board determines that a livestock disease emergency exists requiring its expenditure, and they shall then be expended for such purposes as the livestock sanitary board may order and direct.

History: En. Sec. 3, Ch. 127, L. 1915; re-en. Sec. 2078, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1929; amd. Sec. 109, Ch. 147, L. 1963.

References

Northern Pacific Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

84-5212. (2079) **Use of moneys arising from taxes prescribed in preceding section.** The money received from the tax levied on sheep, as provided in the first part of the preceding section, shall be placed to the credit of the earmarked revenue fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expense of the livestock commission, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the earmarked revenue fund, to be used for like purposes for said livestock commission. The moneys received from the tax levied by the second division of the preceding section, shall be placed in the earmarked revenue fund, to be used by the livestock sanitary board for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith.

History: En. Sec. 4, Ch. 127, L. 1915; re-en. Sec. 2079, R. C. M. 1921; amd. Sec. 89, Ch. 147, L. 1963.

Collateral References

Taxation⇐906¾.
85 C.J.S. Taxation § 1057.

84-5213. (2080) **Transmission of taxes from county to state treasurer.** The taxes levied and the money collected pursuant to the provisions of section 84-5211 shall be transmitted annually, with other taxes for state purposes, to the state treasury by the county treasurer of each county, and such county treasurer shall designate the amount received from the tax levied on sheep, and the amount received from the tax levied on all other livestock, and shall specify said separate amounts in his report to the state treasurer, and such money, when received by the state treasurer, shall be placed to the credit of the funds as provided in the preceding section.

History: En. Sec. 5, Ch. 127, L. 1915; re-en. Sec. 2080, R. C. M. 1921.

84-5214. (2081) **Levy for bounty moneys—use of proceeds.** The state board of equalization of the state of Montana shall, under the authority of section 9, article XII of the constitution of Montana, and hereby, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in cooperation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R. C. M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963.

84-5215. (2081.1) **Bounties, when paid.** The livestock commission may, at their discretion, pay such bounty for the destruction of wild animals at such times of the year as they deem advisable.

History: En. Sec. 4½, Ch. 73, L. 1923.

Collateral References

Bounties⇨8.
11 C.J.S. Bounties § 13.

84-5216. (2082) **Tax levy for bounties on predatory animals.** Whenever the owners, or agent or agents of such owners, representing fifty-one per cent of the livestock of any county in this state shall present a petition to the board of county commissioners of such county, asking for the levy of a tax upon the livestock of such county for the purpose of paying bounties on predatory animals killed in such county, it shall be the duty of such board of county commissioners to make such levy, which shall not exceed

ten mills on the dollar on the assessed valuation of all livestock in such county, which tax shall be assessed and collected in the same manner as all other state and county taxes.

History: En. Sec. 1, Ch. 180, L. 1921; re-en. Sec. 2082, R. C. M. 1921.

References

Northern Pacific Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Collateral References

Counties⇐192.
20 C.J.S. Counties § 281.

84-5217. (2083) **Signers of petition—time for presenting—limitation on bounties—bounty inspectors.** The petition provided for in section 84-5216 shall be signed by the owners, agent, or agents of not less than fifty-one per cent of the livestock of such county as ascertained from the assessment books of such county, and shall recommend to the board of county commissioners the bounties to be paid on such predatory animals, which shall not exceed the following: On each wolf or mountain lion, one hundred dollars; on each wolf pup or mountain lion kitten, twenty dollars; on one coyote, five dollars; on each coyote pup, two dollars fifty cents.

Such petition shall be presented not later than the first day of August of each year, and the board of county commissioners on determining the sufficiency of such petition shall make an order granting such petition, which said order shall fix the levy for that year, and the amount of the bounties to be paid for the killing of each such predatory animal, which shall not exceed the amounts recommended in such petition, and appoint not less than ten, nor more than twenty, stockowners of such county to be bounty inspectors under this act, without compensation, who shall hold their offices for one year.

History: En. Sec. 2, Ch. 180, L. 1921; re-en. Sec. 2083, R. C. M. 1921; amd. Sec. 1, Ch. 37, L. 1923.

84-5218. (2084) **County bounty fund.** The tax collected under this act shall be credited by the county treasurer to a fund to be known as "county bounty fund," and shall be paid out by him upon properly drawn warrants issued thereon by the county clerk.

History: En. Sec. 3, Ch. 180, L. 1921; re-en. Sec. 2084, R. C. M. 1921.

Collateral References

Counties⇐161.
20 C.J.S. Counties § 231.

84-5219. (2085) **Presentation of skins—affidavit.** Any person claiming bounty on any predatory animal under this act shall present the green skin, or pelt, of such animal, with all four feet attached thereto, to any one of the bounty inspectors, provided for in section 84-5217, and shall make an affidavit that such animal was killed within the county where the bounty is claimed, which affidavit shall be corroborated by at least two reputable stockowners of such county to the effect that they know, or have good cause to believe, that such animal was killed within such county. For the purpose of this act each bounty inspector provided for in this act shall be empowered to administer oaths. The said bounty inspector shall endorse upon such affidavit his approval or disapproval of such claim and shall cut from such skin or pelt the four feet. The person applying for such bounty shall

then present the affidavit, with the endorsements thereon, to the county auditor, or in counties not having an auditor, to the county clerk, who shall attach the same to a claim against said county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county.

History: En. Sec. 4, Ch. 180, L. 1921; re-en. Sec. 2085, R. C. M. 1921.

84-5220. (2086) **County clerk to provide forms.** The county clerk shall provide the necessary forms of affidavits and claims for carrying out the provisions of this act.

History: En. Sec. 5, Ch. 180, L. 1921; re-en. Sec. 2086, R. C. M. 1921.

84-5221. (2087) **Existing bounty laws not affected.** Nothing in this act contained shall be construed as interfering with, in any way, or repealing any part of the existing laws of the state relative to the levying of taxes for and paying of the bounties on predatory animals under such state laws.

History: En. Sec. 6, Ch. 180, L. 1921; re-en. Sec. 2087, R. C. M. 1921.

References

Hale v. County Treasurer of Mineral County, 82 M 98, 265 P 6.

CHAPTER 53

MILITARY SERVICEMEN—SUSPENSION OF LICENSE FEES

Section 84-5301. Suspension of license fees from persons in military service.

84-5301. Suspension of license fees from persons in military service. The collection from any person in the military service of the United States, as defined by the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, as amended October 6, 1942, of any license fee or privilege fee or charge, or tax for, and as a prerequisite for carrying on any personal service occupation, or any profession, annually, or for any other period of time, whether falling due prior to or during his period of military service, shall not be made for the period, or any part thereof, during which such person was in military service and for an additional period of six (6) months after the termination of his period of military service, if such person were not actually professing, carrying on and practicing his profession, avocation or occupation in the state of Montana during such period as herein extended, and such person or licensee shall not hereafter be liable for such license fee or privilege fee or tax or personal service charge for any period during which said conditions obtain.

The status, standing and right of any such person or licensee under any of the laws of the state of Montana shall remain in the same force and effect in which said status, right and standing existed at the time such person entered the military service of the United States and for the whole period of such military service and for an additional period of six (6) months after the termination of said period of said military service, and at the end of said extended period said person shall be deemed to be and shall stand, fully and completely restored to all the rights, privileges, of his profession, avo-

cation or occupation, to all intents and purposes as if he had not been absent in military service and had been regularly carrying on his said profession, avocation and occupation and regularly paying all fees and charges due for the same. After the termination of said extended period, six (6) months following termination of his military service, said person shall be subject for the next ensuing annual period, or any part thereof, and regularly thereafter, to all license fees, privilege fees, charges and taxes then lawfully collectible pursuant to law.

History: En. Sec. 1, Ch. 106, L. 1943.

Compiler's Note

The Soldiers' and Sailors' Civil Relief Act of 1940, as amended October 6, 1942, referred to in this section, is compiled in the United States Code as Tit. 50, Appx. secs. 513 to 517, 525 to 527, 530 to 536, 540 to 548, 560, 569, 572, 574, 590.

CHAPTER 54

MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section 84-5401. Taxation of mines.
84-5402. Net proceeds tax—statement of yield.
84-5403. Net proceeds—how computed.
84-5404. Repealed.
84-5405. Lien of tax.
84-5406. Assessment of royalties.
84-5407. False or fraudulent reports, procedure in case of.
84-5408. Transmission of net proceeds to county assessor.
84-5409. Taxation and payment on royalty interests.
84-5410. Penalty for failure to make statement—estimate of net proceeds.
84-5411. Penalty for false statement.
84-5412. Examination of records by board of equalization.
84-5413. Lien of tax—enforcement of payment.
84-5414. Surface ground and improvements not exempt.
84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

84-5401. (2088) **Taxation of mines.** All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof so used for other than mining purposes shall be taxed at its full value for such other purposes; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims, shall be taxed as other personal property.

History: En. Sec. 3, p. 73, L. 1891; re-en. Sec. 3672, Pol. C. 1895; re-en. Sec. 2500, Rev. C. 1907; re-en. Sec. 2088, R. C. M. 1921.

NOTE.—For history of early acts exempting mines from taxation, see Northern Pacific Ry. Co. v. Mjelde, 48 M 287, 137 P 386. See also section 3, article XII of the constitution of Montana.

Burden of Proof

One claiming an exemption from taxation has the burden of showing that he is entitled to it; but in an action to enjoin the collection of taxes upon a ditch used solely in connection with placer mining operations, and therefore not subject to taxation, the burden rests upon the state to show that the ditch has a value

independent of the placer mining claim, so as to render it liable to taxation, as provided in this section. Hale v. County of Jefferson, 39 M 137, 143, 101 P 973.

Under the constitution and this section, before the land embraced in a mining claim becomes subject to taxation at a valuation greater than the price paid the government therefor, the taxing officers must ascertain, and they have the burden of showing when their authority is questioned, that the surface ground, or some portion thereof, is used for other than mining purposes, and has an independent value for such purpose. Barnard Realty Co. v. City of Butte, 50 M 159, 163, 166, 145 P 946. See also note of this decision under section 3, article XII of the constitution of Montana.

Construction

This section follows the language of the constitution. Murray v. Hinds, 30 M 466, 469, 76 P 1039; Cobban v. Meagher, 42 M 399, 407, 113 P 290; Barnard Realty Co. v. City of Butte, 50 M 159, 163, 145 P 946.

Injunction Restraining Collection — Indian Land

Where in 1936 the supreme court granted an injunction to an oil and gas company "forever" restraining and enjoining the state board of equalization from levying or collecting certain taxes upon oil and gas produced under a lease of trust patent Indian land, but the board in 1941 believing that a later decision of the supreme court of the United States superseded and overruled the former decision and took steps to collect the taxes, the oil company should have proceeded under section 93-9801, subsection 5, instead of instituting a new proceeding, which was properly dismissed. Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 224, 225, 114 P 2d 521.

Machinery and Improvements

Machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, are properly assessed as personal property. Birney v. Warren, 28 M 64, 66, 72 P 293.

Net Proceeds

Under this section, which is a reiteration of section 3, article XII of the state constitution, the annual net proceeds of coal mines are liable to taxation "as other personal property." Montana Coal & Coke Co. v. Livingston, 21 M 59, 70, 52 P 780.

Under the state constitution and this section, the net proceeds of all mines and mining claims are taxable the same as other personal property, and the assessor need not follow up the proceeds thereof, the tax being a lien on the mine itself until paid. Tong v. Maher, 45 M 142, 144, 145, 122 P 279.

In determining the net proceeds under the provisions of sections 84-5402 and 84-5403, the gross product received under section 84-5403 is the amount paid to the producer. Hence, where producer received price of $63 a ton from general services administration while the New York market price was only $35 a ton; the total amount received by the producer is to be used. The difference between the market price and the price received is not to be considered a government bonus or subsidy as the producer was not required to sell to the government. Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, overruling Klies v. Linnane, 117 M 59, 156 P 2d 183.

Operation of One or More Mines

The considerations of paramount importance in determining whether an operation constitutes one mine, or more than one, are ownership, location, integration of mining system, and single management. United States Gypsum Co. v. Schreiner, 135 M 312, 340 P 2d 548.

Other Than Mining Purposes

Where a mining claim was within the limits of a city, and, while it had never been made an addition to the city, the owners had made a plat, and sold lots and blocks from the claim for townsite purposes, describing the portions sold by metes and bounds, and it appeared that a shaft had once been sunk on such reserve, but that it had been abandoned, and that the lot on which the shaft was sunk had been sold, the so-called reserve was taxable for purposes other than mining. Murray v. Hinds, 30 M 466, 469, 76 P 1039.

A ditch, appurtenant to placer claims, which had always been used to convey water for mining such claims, and for no other purpose, and which, independently of such use, had never been the source of revenue to its owner, although the water could be sold for irrigation and other purposes, and would be valuable in this connection, had no value independent of its use in connection with the placer lands so as to render it subject to taxation under this section. Hale v. County of Jefferson, 39 M 137, 142, 101 P 973.

The surface ground of an unpatented mining claim, when used for other than mining purposes, and when it has a separate value for such other purposes, is subject to taxation. Cobban v. Meagher, 42 M 399, 409, 113 P 290.

Where lands were sold by a railroad company, and rights were reserved in the deeds to such use of the surface of the land as may be necessary for the exploration, mining and carrying away of the coal that may be found below, is a valuable interest in the land itself, and as such property subject to taxation. Northern Pacific Ry. Co. v. County of Musselshell, 54 M 96, 169 P 53.

Tailings Dump

Tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine." Foreman v. Beaverhead County, 117 M 557, 559, 561, 161 P 2d 524.

Undeveloped Mine

Coal in place, found in lands granted by the government to the Northern Pacific Railway Company, which coal the company reserved to itself in deeds to portions thereof sold by it, constitutes a mine, and as such, in its undeveloped condition, is not a proper subject for taxation. Northern Pacific Ry. Co. v. County of Musselshell, 54 M 96, 169 P 53.

References

State ex rel. Bourquin v. State Board of Equalization, 67 M 340, 348, 215 P 667; Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001; Butte & Superior Min. Co. v. McIntyre, 71 M 254, 229 P 730; Northern Pacific Ry. Co. v. Musselshell County, 74 M 81, 84 et seq., 238 P 872; Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 359, 361, 116 P 2d 1012; Rist v. Toole County, 117 M 426, 439, 159 P 2d 340, 162 ALR 406.

Collateral References

Taxation⇐63.

84 C.J.S. Taxation § 68.

51 Am. Jur., Taxation, p. 452, § 437; p. 643, § 689; p. 645, § 691.

Tenant's interest in respect of building or other structure erected by him as separate unit for property tax apart from land. 154 ALR 1309.

84-5402. (2089) **Net proceeds tax—statement of yield.** Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, or other valuable mineral, must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January of the year in which such statment is made, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state board of equalization on or before the thirty-first day of March. Such statement shall show the following:

1. The name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons, corporations, or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons, corporations or associations during the period covered by the statement.

2. The description and location of the mine.

3. The number of tons of ore, barrels of petroleum, cubic feet of natural gas or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement.

4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits from such mine in constituents of commercial value; that is to say, the number of ounces of

gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of said ores or mineral products or deposits measured by standard units of measurement, yielded to such person, corporation or association so engaged in mining, and to said royalty holders and each of them, if any, during the period covered by the statement.

5. The gross yield or value in dollars and cents.

6. Actual cost of extracting same from mine.

7. Actual cost of transporting to place of reduction or sale.

8. Actual cost of reduction or sale.

9. Actual cost of marketing the product and conversion of same into money.

10. Cost of construction, repairs and betterments of mines, and cost of repairs and replacements of reduction works.

11. The assessed valuation of reduction works for the calendar year for which such return is made.

12. Actual cost of fire insurance and workmen's compensation insurance.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; amd. Sec. 1, Ch. 95, L. 1947.

NOTE.—Earlier acts were sections 1047 to 1050, Revised Statutes 1879; re-enacted sections 1791 to 1794, Fifth Division Compiled Statutes 1887; sections 50 to 57, pp. 93 to 95, Laws of 1891; re-enacted sections 3760 to 3768, Political Code 1895; re-enacted sections 2563 to 2571, Revised Codes 1907.

Constitutionality

This section, as amended in 1927, and section 2096.2, R. C. M. 1935 (since repealed), are not unconstitutional as impairing the obligation of a contract when applied to royalty accruing under a contract executed before the enactment of the sections. Forbes v. Mid-Northern Oil Co., 100 M 10, 21, 45 P 2d 673.

Assessment of Net Proceeds of Mines

The legislature could properly add powers additional to those specifically conferred by section 15, article XII of the constitution, upon the state board of equalization, as it did by chapter 237, Laws of 1921 (84-5402 et seq.), by imposing upon the board the duty to assess net proceeds of mines. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 256, 229 P 730.

Construction of "Royalty" Contracts

Within the meaning of this section and sections 2096.1 and 2096.2, R. C. M. 1921 (since repealed), the question whether payments required to be made to the lessee of oil lands by the oil well operator were "royalties," the provisions of the instrument calling for the payments must be construed for what they really are, regardless of designation in the contract. Forbes v. Mid-Northern Oil Co., 100 M 10, 19, 45 P 2d 673.

Deductions

The state board of equalization is a special tribunal with limited powers and must, in making an assessment of net proceeds of mines, pursue the method of procedure prescribed by chapter 237, Laws of 1921 (84-5402 et seq.); in it is lodged no discretion to permit deductions from the gross proceeds other than those specifically provided for, or to allow reimbursement to the taxpayer for taxes paid by him by mistake in previous years, and mandamus lies to compel the board to follow the law. State ex rel. Bourquin v. State Board of Equalization, 67 M 340, 348, 215 P 667.

Taxes and fire insurance premiums paid upon milling and reduction works owned and operated by a mining company in connection with its mining operations are not deductible as a part of the cost of extracting the minerals and metals from ores taken from its mines in computing the net proceeds of mines for the purpose of arriving at the amount of license tax payable under sections 2344-2355, Revised Codes of 1921 (since repealed), construed in the light of the provisions of this chapter (84-5401 et seq.), relating to the taxation of mines and net proceeds. Anaconda Copper Min. Co. v. Junod, 71 M 132, 135, 227 P 1001.

Estate in Land Held Taxable

Oil and gas leases on Indian lands held under trust patent, in which the oil and gas was reserved for the benefit of the

tribe, created an estate in land distinct and separate from the interest held by the federal government, which estate was subject to operators' net proceeds tax and the gross production tax. British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 302, 54 P 2d 129, affirmed 299 U S 159, 81 L Ed 95, 57 S Ct 132.

Exemption from Tax

Royalty interests accruing to a Blackfeet Indian from an oil and gas lease on reservation lands allotted to and held by him under trust patent are not subject to state taxation under the royalty owner's net proceeds tax. Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 288, 54 P 2d 117; 112 M 359, 365, 116 P 2d 1012.

Liability for Tax

Under this chapter (84-5401 et seq.), the lessee of a (coal) mine, i. e., the person engaged in mining, and not the owner, is the proper party to whom net proceeds are assessable. Northern Pacific Ry. Co. v. Musselshell County, 74 M 81, 84 et seq., 238 P 872.

Where several persons own separate divisible interests in a mine (or oil well) the interest of each is property taxable to each under the statute providing for taxation of net proceeds of mines. (Distinguishing instant case from Northern Pacific Ry. Co. v. Musselshell County, 74 M 81, 238 P 872, containing language intimating that statute contemplates assessment to but one person.) Homestake Exploration Corp. v. Schoregge, 81 M 604, 612, 264 P 388.

Mine Rental

A tax cannot lawfully be levied against a person for property he does not own; and since property in the shape of net proceeds of a mine belongs to the lessee and not to the owner of it, and the statute contemplates but one assessment thereof, to wit: to the lessee, it was error to assess to the owner, as part of the net proceeds of the mine, the rental received by him from the lessee. Northern Pacific Ry. Co. v. Musselshell County, 74 M 81, 84 et seq., 238 P 872.

Nature of Royalty Interest

The owner of a royalty interest in an oil well made taxable under this chapter (84-5401 et seq.), is the owner of property within the meaning of section 17, article XII of the constitution, which is taxable and assessable to the owner of such interest as net proceeds of mines under section 3 of the same article, regardless of the form of the lease under which the royalty is reserved. Byrne v. Fulton Oil Co., 85 M 329, 332 et seq., 278 P 514.

Nature of Tax on Royalty

Oil and gas in place is land, and a tax on the income of such oil and gas is a tax on land. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil or gas and, therefore, a tax levied and assessed against the gas and oil produced. A tax on royalty is a part of the net proceeds tax arising out of the operation of mines, and the holder of royalty interest is liable for tax thereon in absence of contractural obligation to the contrary. Northern Pacific Ry. Co. v. Gas Development Co., 103 M 214, 217, 218, 62 P 2d 204.

Nonresident Royalty Holder

The fact that the owner of a royalty interest in an oil well made taxable under sections 2096.1 and 2096.2, R. C. M. 1935 (since repealed), is a nonresident of the state does not render him immune from payment of a tax thereon, the tax imposed upon the royalty as a part of the net proceeds being in lieu of the ad valorem tax on the oil in the ground as a part of the realty and not a personal property tax depending upon the residence of the owner. Forbes v. Mid-Northern Oil Co., 100 M 10, 23, 45 P 2d 673.

State May Tax Production under Lease of Trust Patent Indian Land

The state board of equalization is authorized to tax the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 288, 54 P 2d 117, with exception of the royalty owner's net proceeds tax, for the reason that the federal supreme court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 359, 361, 116 P 2d 1012.

War Bonus Part of Gross Value

In the determination of the valuation of the net proceeds of mines for the purpose of taxation, the bonus or premium paid by the federal government should be included in the "gross value" of the product which is the basis for the computation of the tax. Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, overruling Klies v. Linnane, 117 M 59, 60, 64, 156 P 2d 183.

What Are Royalties

The consideration for certain assignments of rights in oil lands consisting of an agreement to convey to the assignees "as royalty payable in cash" 20 per cent of all oil produced from the premises, constituted "royalties" within the meaning of this section and sections 2096.1 and 2096.2, R. C. M. 1935 (since repealed). Forbes v. Mid-Northern Oil Co., 100 M 10, 19, 45 P 2d 673.

References

Simpson v. Silver Bow County, 87 M 83, 94, 285 P 195; Foreman v. Beaverhead County, 117 M 557, 560, 161 P 2d 524.

Collateral References

Taxation⇨331.
84 C.J.S. Taxation § 396.

DECISIONS UNDER FORMER LAW

Constitutionality

Chapter 140, Laws of 1927 (since repealed), making the operator of a mine or oil well jointly liable with the holder of a royalty interest for the payment of the tax assessed against the royalty and authorizing the operator to withhold from the proceeds of the royalty interest the amount of any tax thereon paid by him, was not open to the constitutional objection that the operator is thus made the collector of the tax on the royalty interest, contrary to the provision of section 5, article X of the constitution, that the county treasurer shall be such collector, the method of thus collecting the tax by the operator at the source of the product being permissible as a certain and expeditious one calculated to prevent the possibility of any of it escaping taxation. Byrne v. Fulton Oil Co., 85 M 329, 332 et seq., 278 P 514.

Chapter 140, Laws 1927, was not open to the objection that it impairs the obligation of a contract in that whereas at the time the contract of lease between the operator and the lessor of oil land the law contemplated but one assessment and that to the operator, it imposes part of the tax upon the lessor, since a contract between individuals does not have the effect of depriving the state of its power of taxation. Byrne v. Fulton Oil Co., 85 M 329, 332 et seq., 278 P 514.

Chapter 140, Laws 1927, is not unconstitutional as depriving an owner of a royalty interest in an oil well of his property without due process of law by not giving him the right to be heard in the proceedings resulting in the assessment of his interest. Byrne v. Fulton Oil Co., 85 M 329, 332 et seq., 278 P 514.

Since chapter 140, Laws 1927, making royalty interest taxable, applies to all such interests in mining property, it is not unconstitutional as discriminatory. Byrne v. Fulton Oil Co., 85 M 329, 332 et seq., 278 P 514.

Assessment by County Assessor

By the enactment of chapter 237, Laws 1921 (84-5402 et seq.), making net proceeds of mines assessable by the state board of equalization and repealing sections 2563-2571, Revised Codes of 1907, under which the duty of assessing such proceeds had been placed upon the county taxing officers, a county assessor was without authority after the approval of chapter 237 to assess net mine proceeds, and mandamus did not lie to compel him to obey an order of the county board of equalization that he do so. State ex rel. Bourquin v. State Board of Equalization, 67 M 340, 348, 215 P 667.

Not Retroactive

Chapter 140, Laws of 1927 (since repealed), making royalty interests in mines and oil wells taxable and ordaining that the act should become effective as of January 1, 1927, is not retroactive, it not expressly being made so, and therefore does not include royalties accruing prior to January 1, 1927. (Justices Ford and Angstman dissenting.) Byrne v. Fulton Oil Co., 85 M 329, 332 et seq., 278 P 514, distinguished in 97 M 13, 22, 33 P 2d 563; Anderson v. Sunburst Oil & Refining Co., 89 M 175, 176 et seq., 296 P 1108; Forbes v. Mid-Northern Oil Co., 90 M 297, 298, 2 P 2d 1018.

84-5403. (2090) **Net proceeds—how computed.** The state board of equalization shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.

2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine, except as hereinafter provided.

4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.

5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.

6. All moneys actually expended for transporting the ores, and mineral products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.

7. All moneys expended for fire insurance and workmen's compensation insurance, and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

In computing the deductions allowable for repairs, improvements and betterments to the mine, the state board of equalization shall compute and allow ten per cent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county assessor of the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959.

Construction—Payments to a Union for the Miners' Health and Welfare Fund Is Money Expended for Necessary Labor

Under this section money paid by the employer to the union's health and welfare fund pursuant to a collective bargaining agreement is deductible as money expended for necessary labor, since under the N.L.R.A. the employees could strike to enforce such payments and therefore they are as necessary in order to obtain labor as agreeing and paying of a scale of wages. Brophy Coal Co. v. Matthews, 125 M 212, 233 P 2d 397, 398.

Gross Product—What Included In

Where producer received price of $63 a ton from general services administration while market price was only $35 a ton, the difference between the market price and the price received is not to be considered a government bonus or subsidy since the producer was free to sell to anyone and the entire price was to be included in determining the value of the gross product. Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, overruling Klies v. Linnane, 117 M 59, 156 P 2d 183.

Operation of One or More Mines

Where the evidence as to ownership, location, integration of mining system, and single management pointed to one mining operation for the purpose of net proceeds taxation, extension of operations to a second ridge of two parallel ridges did not constitute opening of second mine and expenditures for the extension were tax deductible in connection with the first operation. United States Gypsum Co. v. Schreiner, 135 M 312, 340 P 2d 548.

References

State ex rel. Snidow v. State Board of Equalization, 93 M 19, 51 et seq., 17 P 2d 68. See also annotations under section 84-5402, which cover the entire subject from sections 84-5401 to 84-5403, 84-5405 to 84-5414; Forbes v. Mid-Northern Oil Co., 100 M 10, 13, 45 P 2d 673; Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 273, 54 P 2d 117; British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 300, 54 P 2d 129; Northern Pacific Ry. Co. v. Gas Development Co., 103 M 214, 215, 62 P 2d 204; Klies v. Linnane, 117 M 59, 60, 156 P 2d 183; Foreman v. Beaverhead County, 117 M 557, 560, 161 P 2d 524.

84-5404. Repealed—Chapter 135, Laws of 1955.

Repeal

This section (Sec. 1, Ch. 202, L. 1937; Sec. 1, Ch. 18, L. 1941; Sec. 2, Ch. 95, L. 1947), relating to deductions for capital expenditures relative to petroleum and natural gas production, was repealed by Sec. 16, Ch. 135, Laws 1955.

84-5405. (2090.2) **Lien of tax.** The tax so assessed on net proceeds shall be and shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim.

History: En. Sec. 4, Ch. 161, L. 1933.

References

Foreman v. Beaverhead County, 117 M 557, 560, 161 P 2d 524.

Collateral References

Taxation⇐507.
84 C.J.S. Taxation § 590.
51 Am. Jur. 881, Taxation, § 1010 et seq.

84-5406. (2090.3) **Assessment of royalties.** Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations and associations owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state board of equalization shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded during such preceding calendar year, and the same shall be taxed on the same basis as net proceeds of mines are taxed as provided by section 84-301.

History: En. Sec. 3, Ch. 188, L. 1935.

Net Smelter Returns

The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties and hence classified as class one of sections 84-301 and 84-302 does not of itself contravene sections 1 and 11, article XII of the state constitution. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1020. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

Profit or Loss in Operation of Mine

It does not matter whether the mine is operated at a profit or at a loss by the operator, so far as the royalty holder is concerned. He must pay on the royalty yielded to him whether the operator of the mine operated it at a loss or not. Nor does it matter whether the operator deducted the royalties in making up its return for the computation of its net proceeds. The taxing authorities are required to tax the lessor's net smelter returns for what they are, not for what the parties may do with them. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1019. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

What Constitutes Royalties

Under a lease and option to purchase whereby the lessor was to get a percentage of net smelter returns which were to be credited as purchase money, such payments were nevertheless royalties, although they were credited after receipt as purchase money. The lessor and the lessee can, by no contract between them, make royalties, which are in truth such, exempt from taxation by the expedient of calling them either purchase money, or payments upon the lessor's corporate indebtedness. They are nevertheless royalties between the lessor and the state which is no party to the agreement and is not bound by it. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

Under a contract between the owner of land and the operator of a mining company wherein the owner was to get a percentage of the net smelter returns, which amount was to be credited towards the purchase price, such returns are yet in their origin nothing but royalties, a share of the product of the mines paid over for the privilege of mining on the owner's claims. Under the contract, if these payments are not made, the operator-lessee's right to mine is subject to forfeiture by the terms of the lease. The further stipulation of the agreement that they are to be applied on the purchase price after payment in no manner alters the fact that, unless paid, the operator's privilege ceases at the owner's election. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1016. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

References

Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 273, 54 P 2d 117.

84-5407. (2090.4) **False or fraudulent reports, procedure in case of.** If any such report required by this chapter contains any willfully false or fraudulent statements as to the gross amount received by any person, corporation or association so engaged in mining as aforesaid, for any mine's product, then the said state board of equalization shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided further, that if any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard publication giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935.

References

Klies v. Linnane, 117 M 59, 60, 156 P 2d 183; Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, 981.

84-5408. (2091) **Transmission of net proceeds to county assessor.** On or before the first day of July in each year the state board of equalization shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by such state board of equalization. [The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding, or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In determining net proceeds of each individual year for averaging to determine valuation for purposes of taxation, the actual annual net proceeds as defined in section 84-5403, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year.] The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.

2. The description and location of the mine.

3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.

4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.

5. The net proceeds, in dollars and cents, of such mine or mining claims during the years, to be determined as provided in the preceding section.

The form of said assessment roll shall be prescribed by the state board of equalization in conformity with the provisions of this act.

History: En. Sec. 3, Ch. 237, L. 1921; re-en. Sec. 2091, R. C. M. 1921; amd. Sec. 5, Ch. 188, L. 1935; amd. Sec. 1, Ch. 67, L. 1945; amd. Sec. 1, Ch. 181, L. 1959.

Compiler's Note

The portion of this section appearing in brackets, which was included in the 1959 amendment and which related to "average of annual net proceeds," was declared unconstitutional in the case of State ex rel. Roberts v. State Board of Equalization, 138 M 138, 355 P 2d 150.

Constitutionality

"Average of annual net proceeds," as provided by this section, as amended in 1959, is not the same as the "annual net proceeds" provided in article XII, section 3, of the Montana constitution and therefore the provisions for averaging are unconstitutional. State ex rel. Roberts v. State Board of Equalization, 138 M 138, 355 P 2d 150, 152.

References

Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 273, 54 P 2d 117; British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 300, 54 P 2d 129; Klies v. Linnane, 117 M 59, 61, 156 P 2d 183; Minerals Engineer-

ing Co. v. Greene, 131 M 119, 308 P 2d 977, 978.

Collateral References

Taxation⇨382, 411.
84 C.J.S. Taxation §§ 450, 456.

84-5409. (2091.1) **Taxation and payment on royalty interests.** At the time of transmitting net proceeds assessments the state board of equalization shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

History: En. Sec. 6, Ch. 188, L. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959.

Net Smelter Returns

The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties and hence classified as class one of sections 84-301 and 84-302 does not of itself contravene sections 1 and 11, article XII of the state constitution. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1020. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

Profit or Loss in Operation of Mine

It does not matter whether the mine is operated at a profit or at a loss by the operator, so far as the royalty holder is concerned. He must pay on the royalty yielded to him whether the operator of the mine operated it at a loss or not. Nor does it matter whether the operator deducted the royalties in making up its return for the computation of its net proceeds. The taxing authorities are required to tax the lessor's net smelter returns for what they are, not for what the parties may do with them. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1019. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

What Constitutes Royalties

Under a lease and option to purchase whereby the lessor was to get a percentage of net smelter returns which were to be credited as purchase money, such payments were nevertheless royalties, although they were credited after receipt as purchase money. The lessor and the lessee can by no contract between them make royalties, which are in truth such, exempt from taxation by the expedient of calling them either purchase money, or payments upon the lessor's corporate indebtedness. They are nevertheless royalties between the lessor and the state which is no party to the agreement and is not bound by it. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

Under a contract between the owner of land and the operator of a mining company wherein the owner was to get a percentage of the net smelter returns, which amount was to be credited towards the purchase price, such returns are yet in their origin nothing but royalties, a share of the product of the mines paid over for the privilege for mining on the owner's claims. Under the contract, if these payments are not made, the operator-lessee's right to mine is subject to forfeiture by the terms of the case. The further stipulation of the agreement that they are to be applied on the purchase price after payment in no manner alters the fact that, unless paid, the operator's privilege ceases at the owner's election. New Silver Bell Min. Co. v. County of Lewis and Clark, 129 M 269, 284 P 2d 1012, 1016. (Dissenting opinion, 129 M 269, 284 P 2d 1012, 1021.)

References

Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 274, 54 P 2d 117; British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 300, 54 P 2d 129.

Collateral References

Taxation⇨423, 515.
84 C.J.S. Taxation §§ 465, 607.

84-5410. (2092) **Penalty for failure to make statement—estimate of net proceeds.** If any person, partnership, association, or corporation shall refuse or neglect to make and deliver, under oath, to the state board of equalization any statement required by this act, or to comply with any requirements of this act, the state board of equalization must cause such refusal to be noted upon the assessment roll opposite the name of such person, partnership, association, or corporation, and must make an estimate of the ores, mineral products, or deposit mined and treated or sold by such person, partnership, association, or corporation, and upon such estimate shall fix and determine the value of the net proceeds of said mine or mining claim, as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state board of equalization shall have the power to subpoena and examine, under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association, or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment.

History: En. Sec. 4, Ch. 237, L. 1921; re-en. Sec. 2092, R. C. M. 1921.

Collateral References
Taxation⇐336 (2).
84 C.J.S. Taxation § 401.

84-5411. (2093) **Penalty for false statement.** If any person required by this act to make or file any statement, or to verify, under oath, any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any material respect, such person shall be deemed guilty of perjury, and upon conviction thereof shall be punished as is by law provided for the punishment of perjury.

History: En. Sec. 5, Ch. 237, L. 1921; re-en. Sec. 2093, R. C. M. 1921.

Collateral References
Perjury⇐5.
70 C.J.S. Perjury § 23.

84-5412. (2094) **Examination of records by board of equalization.** The state board of equalization shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state board of equalization find any statement, or any material part thereof, willfully false or fraudulent, said state board of equalization must assess in the same manner as provided for in section 84-5403.

History: En. Sec. 6, Ch. 237, L. 1921; re-en. Sec. 2094, R. C. M. 1921.

Collateral References
Taxation⇐382.
84 C.J.S. Taxation § 450.

84-5413. (2095) **Lien of tax—enforcement of payment.** The taxes on such net proceeds must be levied as the levy of other taxes are provided for,

and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits; provided, however, that such personal or real property is owned by or under lease by the person, partnership, association, or corporation who extracted said ore, or mineral products or deposits.

The tax on such net proceeds may be collected, and the payment thereof, enforced, by the seizure and sale of the personal property upon which the said tax is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

History: En. Sec. 7, Ch. 237, L. 1921; re-en. Sec. 2095, R. C. M. 1921; amd. Sec. 1, Ch. 143, L. 1925.

References

Byrne v. Fulton Oil Co., 85 M 329, 337, 278 P 514.

Collateral References

Taxation⇨507, 575, 585, 617.

84 C.J.S. Taxation, §§ 590, 686, 698; 85 C.J.S. Taxation § 753.

51 Am. Jur. 881, Taxation, § 1010 et seq.

84-5414. (2096) **Surface ground and improvements not exempt.** Nothing is this act must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim, or used in connection therewith, or supplies used either in mills, reduction works or mines.

History: En. Sec. 8, Ch. 237, L. 1921; re-en. Sec. 2096, R. C. M. 1921.

Collateral References

Taxation⇨63.

84 C.J.S. Taxation § 68.

84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the net proceeds of mines, and pay the tax due for such period as it transacted business, on or before the date of such dissolution or cessation of business. The state board of equalization may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 1, Ch. 10, L. 1941.

CHAPTER 55

LIEU TAXES ON RESETTLEMENT PROJECTS—REQUESTS FOR UNITED STATES PAYMENT OF

Section 84-5501. Definitions.
84-5502. State board of equalization may make requests for sums in lieu of taxes from United States, when.
84-5503. Basis for amount of lieu payment.
84-5504. Duplicate of agreement—filing—receipt for tax.
84-5505. Disposal of moneys.
84-5506. Definitions.
84-5507. County commissioners may request payments in lieu of taxes from United States.
84-5508. Basis of payment.
84-5509. Agreement—recitals.
84-5510. Notification of amount of tax payment—collection.
84-5511. Government project fund.
84-5512. Warrants for share payable to subdivisions.
84-5513. Subdivision may make agreement with United States, when.
84-5514. Deposit of funds.
84-5515. Duty of subdivision in absence of agreement.

84-5501. Definitions. The following definitions shall be applied to the terms used in this act:

(1) "Agreement" shall mean "contract," and shall include renewals and alterations of a contract.

(2) "Board" shall mean the state board of equalization of the state of Montana.

(3) "State" shall mean the state of Montana.

(4) "Services" shall mean such public and state functions as are performed for property in and persons residing within this state.

(5) "United States" shall mean the United States of America.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States, located within this state, and shall include persons inhabiting such project.

History: En. Sec. 1, Ch. 58, L. 1939.

Collateral References

Taxation⇐5.
84 C.J.S. Taxation § 198.

84-5502. State board of equalization may make requests for sums in lieu of taxes from United States, when. The board is hereby authorized and empowered to make requests of the United States, for and on behalf of this state, for payment of such sums in lieu of taxes as the United States may agree to pay, and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects, and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 58, L. 1939.

84-5503. Basis for amount of lieu payment. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to the state of performing services for the benefit of the projects during the period of agreement, after taking into consideration the benefits to be derived by the state from such projects, but shall not be in excess of the taxes

which would result to the state for the said period if the real property of the projects within the state were taxable.

History: En. Sec. 3, Ch. 58, L. 1939.

84-5504. Duplicate of agreement—filing—receipt for tax. A duplicate copy of every agreement for payment of sums in lieu of taxes shall be filed in the office of the treasurer of this state. On or before the date on which any payment of sums in lieu of taxes is due, the state treasurer shall present a bill to the United States, in the name of the state, in the amount of such payment. The state treasurer shall give to the United States a receipt in the name of the state for all payments of sums in lieu of taxes.

History: En. Sec. 4, Ch. 58, L. 1939.

84-5505. Disposal of moneys. All payments of sums in lieu of taxes received by this state shall be deposited in funds according to the state levies.

History: En. Sec. 5, Ch. 58, L. 1939; amd. Sec. 1, Ch. 42, L. 1947.

84-5506. Definitions. The following definitions shall be applied to the terms used in this act:

(1) "Agreement" shall mean "contract," and shall include renewals and alterations of a contract.

(2) "Board" shall mean the board of county commissioners of any county in this state.

(3) "Political subdivision" shall mean any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.

(4) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(5) "United States" shall mean the United States of America.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States or any other lands formerly upon the tax rolls and purchased by the United States and used for resettlement, rehabilitation or grazing purposes, located within this state or any political subdivision thereof, and shall include the persons inhabiting, occupying or using any lands so owned or acquired by the United States.

(7) "Governing body" shall mean the commission, board, body, or persons in which the powers of a subdivision as a body corporate, or otherwise, are vested.

(8) "Fund" shall mean, unless otherwise expressed, the "government project fund" to be established pursuant to section 84-5511.

History: En. Sec. 1, Ch. 59, L. 1939; amd. Sec. 1, Ch. 139, L. 1941.

Collateral References
Taxation⇨5.
84 C.J.S. Taxation § 198.

84-5507. County commissioners may request payments in lieu of taxes from United States. The board of county commissioners of any county in

this state is hereby authorized and empowered to make requests of the United States, for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for payment of such sums in lieu of taxes as the United States may agree to pay, and to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project, and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 59, L. 1939.

84-5508. Basis of payment. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf the agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from such project, but shall not be in excess of the taxes which would result to the subdivision for the said period if the real property of the project within the subdivision were taxable.

History: En. Sec. 3, Ch. 59, L. 1939.

84-5509. Agreement—recitals. Each agreement entered into pursuant to section 84-5507 shall contain the names of the political subdivisions with respect to which it is consummated, and a statement of the proportionate share of the payment by the United States to which each such subdivision shall be entitled.

History: En. Sec. 4, Ch. 59, L. 1939.

84-5510. Notification of amount of tax payment—collection. The board shall file duplicate copies of every agreement for payment of sums in lieu of taxes with the county clerk and county treasurer. Upon receipt of the same, the county clerk shall notify each political subdivision for and on whose behalf the agreement is executed that the same has been consummated, and state the share of the payment due thereunder to which the subdivision is entitled. On or before the date on which any payment of sums in lieu of taxes is due, the county treasurer shall present a bill to the United States, in the name of the county, in the amount of such payment. The county treasurer shall give to the United States a receipt in the name of the county for all payments of sums in lieu of taxes.

History: En. Sec. 5, Ch. 59, L. 1939.

84-5511. Government project fund. The county treasurer shall establish a fund in the county treasury to be known as the "government project fund." The fund shall contain an account with each political subdivision which is entitled to a share of a payment of sums in lieu of taxes. Whenever such payment is received, the county treasurer shall apportion it to the several accounts in the fund pursuant to the agreement under which the payment is made.

History: En. Sec. 6, Ch. 59, L. 1939.

84-5512. Warrants for share payable to subdivisions. After apportioning any payment to the several accounts as provided in section 84-5511, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which shall be filed with the board of county commissioners, and the other of which shall be filed with the county clerk. The board of county commissioners shall, by appropriate resolution, order warrants drawn on the county treasurer to the order of each political subdivision named in the itemized statement, in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign said warrants, which shall also be signed by the chairman of the board of county commissioners. Whenever such warrant is presented to the county treasurer, he shall debit the proper account in the fund, and shall pay the amount of such warrant in full, without deduction, to the political subdivision presenting the same; provided, however, that the county treasurer shall not honor such warrant unless it is endorsed by the president, chairman, or other presiding officer of the governing body of such political subdivision. The endorsement of any warrant by said presiding officer of the governing body of a political subdivision as provided in this section shall be construed as an approval of the agreement under which the payment was received. If any governing body of a political subdivision shall refuse to receive any warrant delivered pursuant to this section, the amount of the warrant shall be refunded to the United States by the county.

History: En. Sec. 7, Ch. 59, L. 1939.

84-5513. Subdivision may make agreement with United States, when. If the United States declines to deal with a board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county, or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby authorized to make request of the United States for payments of such sums in lieu of taxes as the United States may agree to pay, and is hereby empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project, and for the payment by the United States to the subdivision, in one or more installments, of such sums in lieu of taxes. The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision for the period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment.

History: En. Sec. 8, Ch. 59, L. 1939.

84-5514. Deposit of funds. All money received by a political subdivision pursuant to section 84-5512 or under section 84-5513 shall be deposited in such fund or funds, or items of a fund or funds, as may be designated in the agreement; provided, however, that if the agreement does not make such

designation, the money received shall be deposited in such fund or funds, or items of a fund or funds, as the governing body of such subdivision shall by appropriate resolution direct.

History: En. Sec. 9, Ch. 59, L. 1939.

84-5515. Duty of subdivision in absence of agreement. No provision of this act shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this act, of the duty of furnishing, for the benefit of a project, all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes.

History: En. Sec. 10, Ch. 59, L. 1939.

CHAPTER 56

CIGARETTE TAX—LICENSES—STAMPS

Section 84-5601. Definitions.
84-5602. Distributors' and dealers' license—application—fees.
84-5603. License—duration.
84-5604. Revocation of license.
84-5605. Unlawful to possess or sell without license.
84-5606. The tax.
84-5606.1. Legislative intent.
84-5607. Affixing of insignia.
84-5608. Insignia purchased at discount.
84-5609. Use of tax stamping meters.
84-5610. Distributors may not sell stamps.
84-5611. Records to be kept by distributors—use of untaxed cigarettes unlawful—violations as nuisance.
84-5612. Carriers to report shipments.
84-5613. Unlawful to transport unstamped cigarettes.
84-5614. Seizures.
84-5615. Investigations—hearings.
84-5616. Hearing—rehearing.
84-5617. Appeals from decision of the board.
84-5618. The board to administer act.
84-5619. Rules and regulations.
84-5620. County attorney and other officers to assist.
84-5621. Clerical and field assistants.
84-5622. Misdemeanors.
84-5623. Saving clause.

84-5601. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(a) The word "board" shall mean the state board of equalization of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization, or association however formed.

(c) The word "insignia" shall mean the impression or mark approved by the state board of equalization, under the provisions of this act.

(d) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to distributors and retailers in original cases.

(e) The word "distributor" shall mean any person engaged in the business of producing or manufacturing cigarettes or importing any thereof into this state, for purpose of distribution or sale.

(f) The words "licensed distributor" shall mean distributor duly licensed under the provisions of this act.

(g) The word "dealer" shall mean any person other than a distributor, who is engaged in the business of selling cigarettes at retail, including persons who sell cigarettes at retail through cigarette vending machines.

(h) The words "licensed dealer" shall mean any person other than a distributor, who is duly licensed under the provisions of this act.

(i) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, gift, barter or exchange.

History: En. Sec. 1, Ch. 289, L. 1947; amd. Sec. 1, Ch. 18, L. 1957.

Cross-Reference

Sale of cigarettes to minors forbidden, sec. 94-35-208.

Collateral References

Licenses⇨16.
53 C.J.S. Licenses § 30.
33 Am. Jur. Licenses, p. 336, § 17; p. 341, § 20.

84-5602. Distributors' and dealers' license—application—fees. Every such distributor or dealer shall secure a license from the board before engaging in the business of distributor or dealer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by each distributor or dealer within the state of Montana. Cigarette vending machines shall not be considered to be places of business but a separate application and a separate license shall be required for each cigarette vending machine owned, controlled or operated within the state of Montana. Application for such license shall be made on forms prescribed by the board, which shall state the name and address of the applicant, the name, address and place of business to be licensed, the type of business, or such other information as the board may require for the proper administration of this act. Each application for a distributor's license shall be accompanied by a fee of fifteen dollars ($15.00). Each application for a dealer's license shall be accompanied by a fee of five dollars ($5.00). No dealer shall be granted a distributor's license except a dealer who also performs, in the usual course of business, a distributor's function. Each license so issued shall be permanently and prominently displayed on the premises or cigarette vending machine covered by the license. Distributors and dealers licensed under this act may buy, sell or have in their possession, only cigarettes which have the insignia provided for in this act on each individual package. The insignia provided for in this act shall be sold to, and affixed by, licensed distributors and licensed dealers only. A distributor's license shall not authorize the holder thereof to make sales of cigarettes at retail in less than carton lots.

History: En. Sec. 2, Ch. 289, L. 1947; amd. Sec. 2, Ch. 18, L. 1957.

84-5603. License—duration. Each license so issued shall be valid until surrendered, or revoked by the board, or unless the business or place for which such license was issued, shall be transferred, in which event the

holder of the license, shall immediately return it to the board for cancellation.

History: En. Sec. 3, Ch. 289, L. 1947.

84-5604. Revocation of license. The board may revoke the license of any dealer or distributor for failure to comply with any provision of this act, or with any lawful rule or regulation of the board made pursuant hereto. Any person aggrieved by such revocation may apply to the board for a hearing, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. Any person who shall sell cigarettes after his license has been revoked is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 4, Ch. 289, L. 1947.

84-5605. Unlawful to possess or sell without license. No person shall sell, offer to sell, or possess with intent to sell, any cigarettes, at wholesale or retail, unless a license so to do has first been issued to him under the provisions of this act. Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 5, Ch. 289, L. 1947.

84-5606. The tax. Subdivision—(1) All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.

Subdivision—(2) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to wit: Five cents (5¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then five cents (5¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

Subdivision—(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on

cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I.

Subdivision—(4) From and after the effective date of this amendatory act of the thirty-eighth legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies, and the payment of the interest thereon, and the payment of the expenses of administration of this amendatory act.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly canceled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 97, and once by Ch. 270. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has

made a composite section incorporating both amendments.

Tobacco Tax Referendum

Chapter 264, Laws 1965, provided for submission to the voters at the 1966 general election of a question as to whether a three-cent tobacco tax should be levied for constructing and remodeling state buildings. The act read: "An act submitting to the electorate at the November 1966 general election the question of whether or not a tobacco tax should be levied for the purpose of financing the cost of constructing and remodeling state buildings.

"Section 1. Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1966, the three cent (3¢) per package cigarette tax authorized by section 84-5606, subdivision 3 and 4, R. C. M. 1947, and a tax in an amount to be fixed by law on all other tobacco products may be levied and collected for the purpose of financing the cost of constructing and remodeling state buildings.

"Section 2. This referendum shall be submitted to the electors on an official ballot which shall contain the title of this act and the number of the referendum. The question shall be presented in substantially the following form:

☐ For Referendum Measure No. —.
☐ Against Referendum Measure No. —."

Cross-References

Counterfeiting state tax stamps, sec. 94-35-260.

Pledge of cigarette tax proceeds to sinking fund for long-range building program bonds, sec. 79-2203.

INITIATIVE MEASURE NO. 54 AMENDMENTS

Initiative Measure No. 54 (Laws 1951, pps. 781 to 790) was amended by chapter 44 and chapter 45 of the 1957 Session, by chapter 13 and chapter 49 of the 1959 Session, and by chapter 192 and chapter 270 of the 1963 Session: These acts read as follows:

Chapter 44, Laws 1957; amd. chapter 13, Laws 1959; amd. chapter 192, Laws 1963

An act to amend Initiative Measure No. 54, adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, by amending section 1 thereof, defining terms; by amending section 2 thereof so as to provide for the payment of an honorarium to persons serving on active duty during the Korean War; authorizing issuance of six million dollars ($6,000,000.00) of limited obligation bonds or so much thereof as may be necessary to supplement the moneys now in the "War Veterans' Compensation Fund" sufficiently to make the payments provided for in said Initiative No. 54 as hereby amended; by adding thereto a new section to be numbered 14-A, providing for the deposit of moneys from the sale of such additional bonds in said "War Veterans' Compensation Fund"; amending section 16 of said Initiative No. 54, and amending sections 84-5606 and 84-5621, Revised Codes of Montana, 1947, as amended, by providing an additional excise tax upon the sale of cigarettes in the state of Montana; said moneys to be deposited in the "War Veterans' Compensation Bond Retirement Fund No. 2" for the payment of such additional bonds and interest thereon and creating such fund; making an appropriation of the moneys now remaining in the "War Veterans' Compensation Fund" not needed for the payment of the honorarium to persons who served in World War II and of the funds derived from the sale of said bonds; by adding a section to be numbered 17-A, providing that nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54; providing that said Initiative No. 54 as by this act amended shall be construed as though it had been originally passed with the amendments made by this amendatory act, if such construction does not conflict with express provisions of this amendatory act; providing limits of time within which claims under subdivisions (b), (c), and (d) of section 2 of said Initiative No. 54, as said section is by this amendatory act amended, under section 3 of said Initiative No. 54 as by this amendatory act amended, or under section 5 of said Initiative No. 54 as by this amendatory act amended, may be filed; making incidental amendments of the sections of said Initiative No. 54 in this amendatory act specifically referred to, germane to the general purpose of this amendatory act and designed to facilitate the administration thereof; providing that if any part of this amendatory act shall be held invalid, such invalidity shall not affect the other provisions of this act; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

WHEREAS, the Korean War began before the submission of Initiative No. 54, ADOPTED by the vote of the people of Montana at the regular General Election of November 7, 1950, but too late to per-

mit the inclusion in the provisions of said act of persons in the military service during said Korean War; and

WHEREAS, it was the intent of the people of Montana to recognize by the honorarium provided in said Initiative No. 54 all residents of Montana rendering military service on behalf of said state in the then emergency; and

WHEREAS, said Korean War was a recrudescence of said World War II and properly includable within the provisions of said Initiative No. 54,

Section 1. That section 1 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 1. As used in this law.

(a) The term "World War II" means the period between December 7, 1941, and September 2, 1945, both dates inclusive.

(b) The term "Korean War" means the period between June 25, 1950, and October 16, 1953, both dates inclusive.

(c) The term "Korean Theater" means the Korean Peninsula and the waters surrounding said Peninsula, the islands of Japan and other territory upon which personnel of the United Nations were based during said Korean War or operating in the presence of the Korean Conflict.

(d) The term "Military Forces" as applied to World War II means the Army, the Navy, the Marine Corps, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, all Air Forces, and all other groups and services in and forming a part of the Armed Services under the control and subject to the discipline of the War Department or the Navy Department of the United States, and engaged in the prosecution of World War II.

(e) The term "Military Forces" as applied to the Korean War means the Army, the Navy, the Marine Corps, the Air Force, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, and all other groups and services forming a part of the Armed Services under the control and subject to the discipline of the Department of Defense of the United States and on active duty during the period of said Korean War. The term "Department of Defense" as herein used means all of the branches of the Armed Services of the United States acting under the unified control of the Department of Defense.

(f) The term "Military Service" means service on active duty by any person in any of the military forces at any time during World War II or during said Korean War.

(g) The term "Person" includes female as well as male.

(h) The term "Serviceman" means a person who is entitled to receive payments under section 2 of this law.

(i) The term "Resident of Montana" means a person who was in military service and who at the time of his or her entry into such military service had his or her home in Montana. A person who, on December 7, 1941, or in the case of the Korean War, on June 25, 1950, was serving on active duty in any of the armed services of the United States and who at the time of his or her then last entry into such service made his or her home in Montana and who was in the military service at some time in World War II, or during the Korean War, shall be deemed a resident of Montana, unless he or she, after such last entry, and before entry into military service in either such war, had established and was then maintaining a home in some other state; and any such serviceman whose parents or surviving parent then resided in Montana, shall be deemed a resident of Montana.

(j) The term "Continental Limits of the United States" means the area of the 48 states and the District of Columbia, to high-water mark on its water boundaries.

Section 2. That section 2 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 2. In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War II, and in the prosecution of said Korean War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to,

(a) Each resident of Montana who was in military service as a member of any branch of the military forces of the United States at some time during World War II an honorarium, or adjusted compensation, in the sum of ten dollars ($10.00) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars ($15.00) for each month and major fraction of a month for such service outside the continental limits of the United States;

(b) Each resident of Montana who was in military service at some time during the Korean War, and during part or all of the period of such service was in said Korean Theater, an honorarium, or adjusted compensation, in the sum of fifteen dollars ($15.00) for each month and major fraction of a month of such

service in said Korean Theater, and ten dollars ($10.00) for each month and major fraction of a month of such service outside said Korean Theater, provided further that any serviceman who, while on active duty in said Korean Theater during said Korean War, shall have suffered disease or injury from any cause whatsoever, including injury from exposure to weather and/or weather conditions, and in line of duty, and is hospitalized therefor by any of the armed services of the United States he or she shall be deemed, for the purpose of this amendatory act, to have been in military service in said Korean Theater as long as he or she shall be or have been continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, and wherever situated, subject to the limitation in this subdivision hereinafter specified; provided further that any serviceman who shall have been taken prisoner by the enemy in said Korean Theater, and who shall have been classified by any of said armed services under the Department of Defense as a prisoner of war, shall receive the sum of fifteen dollars ($15.00) for each month and major fraction of a month during which he or she was so held by the enemy as such prisoner; but any such prisoner of war shall be paid not less than three hundred dollars ($300.00); and provided, finally, that no serviceman shall be paid, under any of the provisions of this subdivision, more than six hundred dollars ($600.00);

(c) Each resident of Montana who was in military service during said Korean War, but whose military service was wholly outside said Korean Theater, an honorarium, or adjusted compensation of ten dollars ($10.00) for each month and major fraction of a month of such service;

(d) The surviving spouse, children, or parents, as the case may be, and as in this amendatory act hereinafter provided, of any Korean serviceman who died in line of duty while in such military service during either World War II or said Korean War, or who shall have died prior to payment under this section from any cause attributable to his military service, in line of duty, as shown by the records of the United States Veterans' Administration, shall be paid the amount to which such deceased serviceman would have been entitled had he received payment of said honorarium, of if such amount is less than five hundred dollars ($500.00), then such surviving spouse, children or parents, as the case may be, shall be paid the sum of five hundred dollars ($500.00), and no more;

(e) Provided that there shall be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in either of said Wars, no more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory; and provided further that no payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 1. That section 3, chapter 44, Laws of 1957, be, and the same is hereby amended to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment under this law, the amount specified in section 2 of this amendatory act, shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to the child or children who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children, then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this paragraph provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person. [As amended by sec. 1, Ch. 13, Laws 1959.]

[The remainder of Ch. 13, Laws 1959 read as follows:

"Section 2. Nothing in this act shall be deemed to amend or in any way alter the provisions of sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 or 13 of chapter 44, Laws of 1957.

"Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 4. This act shall be in full force and effect from and after its passage and approval." Approved February 4, 1959.]

Section 4. That section 5 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 5. In the case of minors or incompetent persons, claims shall be filed by and payments made to his or her guardian, his or her custodian duly appointed by the Veterans' Administration, or his or her legal fiduciary.

Section 5. That section 12 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 12. For the purpose of providing for the payment of the honorarium, or adjusted compensation, herein provided for and for paying the expenses of administration of this law, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of twenty-two million dollars ($22,000,000.00) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner in this law provided; shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax in this law provided for and place the proceeds thereof in the War Veterans' Compensation Bond Retirement Fund, until all bonds issued hereunder, and the interest accruing thereon, shall have been paid; shall draw interest at the rate of not more than four and one-half per cent (4½%) per annum, payable semiannually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity; whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds; and said board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semiannually, which coupons shall be executed with facsimile signatures of all the members of said board of examiners, and the signing of such coupons with such facsimile signatures shall be recognized as sufficient execution of such coupons on behalf of the state of Montana. Provided, however, that if the moneys derived from said first issue of twenty-two million dollars ($22,000,000.00) of bonds as in this section above-provided shall be insufficient to pay all claims heretofore filed with and heretofore or hereafter allowed by said board of examiners under the original provisions of said Initiative No. 54 as heretofore amended, and to pay all claims filed and allowed under this amendatory act, together with the expenses of administration of this amendatory act, there shall be issued and sold under the direction and supervision of the board of examiners of the state of Montana limited obligation bonds of the state of Montana in the further sum of six million dollars ($6,000,000.00) or in such sum within that amount as may be necessary for such purposes. The issuance of such bonds shall be made in the same manner and such bonds shall be subject to the same limitations, restrictions, and provisions as apply to said original issue of twenty-two million dollars ($22,000,000.00), except that such bonds shall draw not more than four and one-half per cent (4½%) interest and shall be payable only out of a cigarette tax as hereinafter provided in this amendatory act.

Section 6. That there is hereby added to said Initiative No. 54 a new section to be numbered section 14-A, to read as follows:

Section 14-A. The money arising from the sale of such said additional bonds in the amount of six million dollars ($6,000,000.00) in this amendatory act above-provided for as may be sold as herein provided shall be deposited in the state treasury to the credit of the special fund created by said Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in said fund, after payment of all claims heretofore filed with and heretofore or hereafter allowed by the board of examiners under the original provisions of said Initiative No. 54, shall, together with such additional funds as may be derived from the sale of bonds under the said issue of six million dollars ($6,000,000.00) authorized by this amendatory act, be used to pay said honorarium granted by subdivisions (b), (c), and (d) of section 2 hereof, and by section 3 of said Initiative No. 54 as hereby amended, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is hereby appropriated from the War Veterans' Compensation Fund, in addition to the appropriation made by section 14 of said Ini-

tiative No. 54 as originally enacted, the moneys now remaining in said fund and not needed for the payment of the honorarium to persons who served in World War II, and the sum of six million dollars ($6,000,000.00), or so much thereof as may be necessary to pay said honorarium to the persons who served in the military forces in said Korean War.

Section 7. That section 16 of said Initiative No. 54 be, and the same is hereby amended to read as follows:

Section 16. That in addition to the aggregate excise tax upon cigarettes now provided for by section 16 of said Initiative Measure No. 54, there is hereby imposed a tax of one cent (1¢) on each package of cigarettes containing not more than twenty (20) cigarettes, and when a package shall contain more than twenty (20) cigarettes, then one cent (1¢) for each twenty (20) or fraction of twenty (20) cigarettes in such package. Such additional tax shall be collected at the same time and in the same manner as the tax levied and imposed by subdivision (2) of said section 16 of said Initiative Measure No. 54. For the purpose of giving full legal effect to said increase of said excise tax, section 84-5606 of said Title 84 and section 84-5621 of said Title 84 are hereby amended so as to read as follows:

Section 84-5606 [See section as set out above.]

Section 84-5621. [See section 84-5621.]

Section 8. There is hereby added to said Initiative No. 54 a new section to be numbered section 17-A to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54, or of the interest thereon, but the provision made by said Initiative for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Except where such construction would conflict with express provisions of this amendatory act, said Initiative No. 54 shall be construed as though the amendments made hereby had formed a part of said Initiative at the time of its adoption on November 7, 1950. Nothing herein contained is to be construed as extending the time of filing claims under said Initiative No. 54 as originally adopted nor as amended by chapter 123 of the Laws of the Thirty-third Session of the Montana Legislative Assembly, nor as authorizing any payments from said War Veterans' Compensation Fund except expenses of administration of said Initiative as hereby amended, of claims for the honorarium filed on or prior to January 1, 1954, and the expenses of administration in connection therewith, and of the payments provided for in subdivisions (b), (c) and (d), of section 2, and in sections 3 and 5, of said Initiative No. 54 as amended.

Section 10. Claims for benefits under the provisions of subdivisions (b), (c) and (d) of section 2, and/or under sections 3 and 5 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of six (6) years from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of six (6) years shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 11. If any provision contained in this amendatory act shall for any reason be held invalid, such decision shall not invalidate the remaining provisions of this act.

Section 12. All acts or parts of acts in conflict herewith are hereby repealed.

Section 13. This act will take effect and be in full force and effect from and after its passage and approval. Approved February 26, 1957.

[The remainder of Ch. 192, Laws 1963, read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved March 7, 1963.]

Chapter 45, Laws 1957; amd. Chapter 49, Laws 1959

An act to amend Initiative Measure No. 54 adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, as amended by chapter 123, Session Laws of 1953, relating to section 6 thereof, by providing a new date for applications for payment of the honorarium to be December 31, 1957, repealing all acts and parts of acts in conflict herewith, and containing an effective date.

Section 1. That section 6 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 6. All applications for the payment of the honorarium or adjusted compensation here provided for shall be filed with the board of examiners before the thirty-first day of December, 1959: and the filing of an application with a county clerk and recorder of any county of this state shall be deemed, for the purpose of this section, to have been filed with said board as of the date of filing with such clerk and recorder. Upon receiving any

such application such clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon such application, over his signature and seal, and immediately transmit such application to the said board of examiners. Any filing with such board or with any such clerk and recorder within the time limited by this section shall be effective to preserve the rights of the applicant though such application as so filed shall be defective, provided defects therein are later corrected under reasonable rules to be adopted by said board.

[The remainder of Ch. 49, Laws 1959 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 26, 1959.]

Section 3. This act shall be in full force and effect upon its passage and approval. Approved February 26, 1957.

Chapter 270, Laws 1963

An act providing for payment of an honorarium for veterans of World War I from the proceeds of bonds to be retired with income from the cigarette tax; amending sections 3 and 17-A of Initiative No. 54 and sections 84-5606 and 84-5621, R. C. M. 1947, and repealing sections 1, 2 and 12 of Initiative No. 54.

Section 1. There is added a new section 1 to Initiative No. 54 to read as follows:

Section 1. As used in this law.

(a) The term "World War I" means the period between April 6, 1917, and May 11, 1919, both dates inclusive; except that for those persons assigned to duty with the American Expeditionary Forces serving in Siberia, the term World War I includes the period between April 6, 1917, and April 1, 1920, both dates inclusive.

(b) The term "military forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the construction battalions, all women's auxiliary corps, the nursing services, all air forces, and all other groups and services in and forming a part of the armed services under control and subject to the discipline of the war department or the navy department of the United States, and engaged in the prosecution of World War I.

(c) The term "military service" means service on active duty by any person in any of the military forces at any time during World War I.

(d) The term "person" includes female as well as male.

(e) The term "serviceman" means a person who is entitled to receive payments under section 2 of this law.

(f) The term "resident of Montana" means a person, or the parents or surviving parent of a person, who was in military service and who at the time of his entry into such military service had his home in Montana. A person who, on April 6, 1917, was in military service and who at the time of his last entry into such service made his home in Montana shall be deemed a resident of Montana, unless he, after such last entry, and before entry into military service in such war, had established and was then maintaining a home in some other state.

(g) The term "continental limits of the United States" means the area of the fifty (50) states and the District of Columbia, to high-water mark on its water boundaries.

Section 2. There is added a new section 2 to Initiative No. 54 to read as follows:

Section 2. (1) In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War I, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to each resident of Montana who was in military service an honorarium, or adjusted compensation, in the sum of ten dollars ($10) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars ($15) for each month and major fraction of a month for such service outside the continental limits of the United States.

(2) There shall not be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in World War I, more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory.

(3) No payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 3. Section 3 of Initiative Measure No. 54 is amended to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment

under this law, the amount to which he was entitled shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to any child or children under eighteen (18) years of age who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children under eighteen (18) years of age, then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this section provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person.

Section 4. There is added a new section 12 to Initiative No. 54 to read as follows:

Section 12. If the moneys derived from the issue of bonds authorized by section 12 of Initiative No. 54 as originally enacted and subsequently amended for the purpose of providing for the payment of the honorarium, or adjusted compensation to veterans of World War II and the Korean War and for paying the expenses of administration of this law shall be insufficient for the payment of the honorarium or adjusted compensation herein provided, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of two million five hundred thousand dollars ($2,500,000) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner provided for by this law. The bonds shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax provided for in this law and to apply the proceeds thereof to the retirement of all bonds issued hereunder, and the interest accruing thereon. The bonds shall draw interest at the rate of not more than four and one-half per cent (4½%) per annum, payable semiannually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity, whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds. The board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semiannually, which shall be executed with facsimile signatures of all the members of said board of examiners. The signing of such coupons with facsimile signatures shall be recognized as sufficient execution of the coupons on behalf of the state of Montana.

Section 5. There is added a new section to Initiative No. 54 to be numbered section 14-B, to read as follows:

Section 14-B. The money arising from the sale of such additional bonds in the amount of two million five hundred thousand dollars ($2,500,000) authorized by this amendatory act shall be deposited in the state treasury to the credit of the special fund created by Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in such fund, after payment of all claims allowed by the board of examiners under the provision of Initiative No. 54 as originally enacted and subsequently amended, shall, together with such additional funds as may be derived from the sale of bonds under the issue authorized by this amendatory act, be used to pay the honoraria granted by sections 2 and 3 of this act, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is appropriated from the War Veterans' Compensation Fund the moneys now remaining in the fund and not needed for the payment of the honoraria to persons who served in World War II or the Korean War, and the sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary to pay honoraria to the persons who served in the military forces in World War I.

Section 6. Section 84-5606, R. C. M. 1947, is amended to read as follows:

Section 84-5606. [See section as set out above.]

Section 7. Section 84-5621, R. C. M. 1947, is amended to read as follows: [See section 84-5621.]

Section 8. Section 17-A of Initiative No. 54 is amended to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000) of bonds or of the six million dollars ($6,000,000) of bonds heretofore sold under the authority of said Initiative Measure No. 54, as amended, or of the interest thereon, but the provision made by said Initiative, as amended, for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Claims for benefits under the provisions of sections 2 and 3 of Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of three (3) years after the January first next following the date of the passage and approval of this amendatory act, however, such three (3) year period shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 10. Sections 1, 2 and 12 of Initiative No. 54, as amended, are repealed.

Section 11. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Constitutionality of Initiative No. 54

This act does not vest legislative powers in the board of examiners in violation of article IV of the Montana constitution. The amount needed to pay the honorarium and the income to be received from the cigarette tax are both unknown and therefore properly left to the determination of the board. The act does have standards; it specifically defines the persons entitled to receive the honorarium and the conditions thereof, and irrevocably sets aside the funds for the payment of a sum which can be made certain. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 292.

There is no merit in the contention that this is an arbitrary tax because it is a special assessment and only cigarettes are taxed. The practice of levying an excise tax upon tobacco is so well established that it is no longer open to question. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 291.

Constitutional prohibition against appropriations of money by initiative is directed solely to appropriations from the general fund; hence, this act which creates a special fund into which the revenue must go, and provides that it can only be used for the directed purpose is not an appropriation from the general fund. The act provides that it shall be collected in the same manner as the prior cigarette tax, therefore, it is not subject to the attack that it involves additional administrative cost which is an appropriation from the general fund, since the cost of collection of a four cent tax is no greater than a two cent tax. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 293.

The act cannot be criticized as serving no public purpose. What constitutes a public purpose is a question primarily for legislative determination and the proposition that a public purpose is served by legislation on behalf of veterans is now so thoroughly established that it is no longer a constitutional barrier. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 293.

Submission to Voters

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under the constitution of Montana. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915, 916.

References

Wilford v. Board of Examiners, 125 M 614, 239 P 2d 299.

84-5606.1. Legislative intent. The legislative assembly hereby declares that its intent in enacting section 84-5606 is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the federal Internal Revenue Code of 1954 in computing their taxable income.

History: En. Sec. 2, Ch. 97, L. 1963.

Compiler's Note

Section 164 of the federal Internal Revenue Code of 1954, referred to in this section, is compiled in the United States Code as Tit. 26, sec. 164.

84-5607. Affixing of insignia. Insignia shall be affixed to packages of cigarettes only by licensed distributors and dealers. Provided, however, the provisions of this act shall not apply to public warehouses acting as agents of manufacturers.

History: En. Sec. 7, Ch. 289, L. 1947; amd. Sec. 4, Ch. 18, L. 1957.

84-5608. Insignia purchased at discount. Every licensed distributor and dealer will be entitled to purchase said insignia at a discount of eight per cent (8%) of their face value, upon payment therefor. This discount is not applicable to that portion of the tax collected for any veterans' honorarium.

History: En. Sec. 8, Ch. 289, L. 1947; amd. Sec. 5, Ch. 18, L. 1957; amd. Sec. 2, Ch. 222, L. 1957.

Compiler's Note

This section was amended twice in the 1957 Session. Once by chapter 18 and once by chapter 222. Neither law contained a specific effective date. Chapter 18 was signed by the governor February 18 while chapter 222 was signed March 12. As the acts are not in conflict with each other the compiler has made a composite section.

84-5609. Use of tax stamping meters. The board may authorize any manufacturer, distributor or dealer of cigarettes to use a tax stamping meter machine with which to place an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the board. Each individual package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax stamping meter machine and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any distributor or dealer licensed under this act. The board shall supervise and check the operation of such tax stamping meter machines. The operator of such machine, before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall collect from said operator the amount of money proper for said setting, less a discount of ten per cent (10%) on that portion of the tax not being collected for any veterans' honorarium. The county treasurer shall immediately report to the board on forms prescribed by it, the name of the operator and the number of packages for which said meter was set and shall immediately forward to the board the amount collected from said operator.

History: En. Sec. 9, Ch. 289, L. 1947; amd. Sec. 6, Ch. 18, L. 1957.

84-5610. Distributors may not sell stamps. No distributor or retailer shall resell to any other distributor or retailer any stamps purchased by him from the board. Any distributor or retailer who has on hand any

unused or uncanceled stamps at the time of discontinuing his business of selling cigarettes, may return such stamps to the board and be paid ninety per cent (90%) of their face value.

History: En. Sec. 10, Ch. 289, L. 1947.

84-5611. Records to be kept by distributors—use of untaxed cigarettes unlawful—violations as nuisance. All such distributors shall keep for a period of one (1) year, all invoices of cigarettes purchased and imported by them, all receipts issued by them and stamps purchased, also, an accurate record of all sales of cigarettes made within the state, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point and destination. Such distributor shall permit the board, its assistants, authorized agents or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda and records, as may be necessary to determine whether the tax stamping meter machine has been used as required, or the stamps required by this act had been purchased and used, or to determine the amount of such tax as may be due or unpaid.

Every person who purchases any package of cigarettes which does not bear the stamp or insignia required by this act, and every person who shall use or consume within this state, any cigarettes, unless the same shall be taken from the original package having affixed thereto the stamp or insignia required by this act, is guilty of a misdemeanor and shall be punished as hereinafter provided.

Every person having possession or control of, or who maintains a building or place where cigarettes are sold in violation of this act, or permits the same to be done in any place or building possessed, controlled or maintained by him, is guilty of maintaining and keeping a nuisance and the building or place so used, together with the personal property and fixtures used in connection therewith shall be deemed a nuisance, and such person shall be enjoined and such building or place, personal property and fixtures abated as a nuisance, at the instance of the state.

History: En. Sec. 11, Ch. 289, L. 1947.

84-5612. Carriers to report shipments. Every common carrier hauling, transporting or shipping into or out of the state of Montana, from or to any other state, any cigarettes shall, when so required by the board, report in writing of such shipments or deliveries to the board, on blanks furnished by it, giving the date, the person to whom the same was consigned and delivered and the quantity as shown by the bill of lading, and such other information as the board may require.

History: En. Sec. 12, Ch. 289, L. 1947.

84-5613. Unlawful to transport unstamped cigarettes. It shall be unlawful for any person to transport into, receive, carry or move from place to place within this state, except in the course of interstate commerce, any unstamped cigarettes. Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and any motor vehicle, airplane, conveyance, vehicle or other means of

transportation in which cigarettes are being transported, together with the cigarettes and other equipment or personal property used in connection with such transportation, and found in such means of transportation, shall be subject to seizure by the board, its duly authorized agent, or any sheriff or deputy, or other police officer, with or without process, and shall be subject to forfeiture in the manner hereinafter provided.

History: En. Sec. 13, Ch. 289, L. 1947.

84-5614. Seizures. Upon the seizure of any cigarettes, and within two (2) days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the board. Within ten (10) days after the date of service, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may, within thirty (30) days from such seizure, institute an action in the district court of the county where such seizure was made, to determine the issue of forfeiture. In case a judgment of forfeiture is entered, unless such judgment is stayed pending an appeal to the supreme court, the board shall, as soon as convenient, sell such forfeited property and remit the proceeds, less court costs to the state treasurer who shall deposit the same to the general fund of the state. In the event no action is instituted, as herein provided, such seized property shall be deemed forfeited to the state by operation of law, and the board may thereupon sell the same in the manner aforesaid. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation, pursuant to the provisions of this act, the officer making the seizure shall file a like inventory, and the person from whom the seizure was made, may, within thirty (30) days thereafter, commence an action in the district court of the county where the seizure was made, to determine the issue of forfeiture of such vehicle or other means of transportation; provided, however, that whenever the board is satisfied that any person from whom property is seized under the provisions of this act, was acting in good faith and without intent to evade the revenue provisions hereof, it shall release the property so seized without further legal proceedings.

History: En. Sec. 14, Ch. 289, L. 1947.

84-5615. Investigations—hearings. The board and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings hereunder, and any member thereof, or any agent, is authorized to administer oaths and take testimony under oath, relative to the matter of inquiry or investigation. The board, or its authorized agent, may subpoena witnesses and require the production of books, papers, and documents pertinent to such inquiry. The board, or its agent, after the hearing, shall make findings and an order, in writing, which findings and order shall be filed in the office of the board.

History: En. Sec. 15, Ch. 289, L. 1947.

84-5616. Hearing—rehearing. Any person aggrieved by any action of the board or its duly authorized agents, under the provisions of this act, may apply to the board, in writing, for a hearing or rehearing thereon with-

in thirty (30) days after such action of the board or its authorized agents. The board shall promptly consider such application, and may grant or deny the same. If the hearing be denied, the applicant shall be notified thereof, forthwith, and, if granted, the board shall notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises, as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The board, on its own initiative, may order a hearing on any matter concerned with the administration of this act, upon at least ten (10) days notice in writing to the person or persons to be investigated.

History: En. Sec. 16, Ch. 289, L. 1947.

84-5617. Appeals from decision of the board. Any person aggrieved by any action or decision of the board, made under the provisions of this act, may appeal therefrom to the district court of the county where appellant resides, which appeal shall be taken by notice of appeal in writing, setting forth the actions or decision of the board, of which the appellant is aggrieved. Such appeal shall be perfected within thirty (30) days after notice of any decision or action of the board, and shall be taken by serving a notice of appeal upon the board and filing the same with the clerk of said district court, together with a good and sufficient bond to the state of Montana. The condition of such bond shall be to the effect that appellant agrees to prosecute said appeal diligently, and if the court shall finally decide that the state is entitled to judgment, that appellant will pay the amount thereof together with costs upon such appeal. Such bond shall be further conditioned that appellant will comply with the orders and decrees of the court. The bond shall be in the form required by law and in such an amount as the court may require. The notice of appeal shall be signed by the appellant or his attorney, and the matter appealed shall be heard upon ten (10) days notice given by either party, unless a different time is specified by the court. Said district court may grant such relief as the law and the facts in the premises require.

History: En. Sec. 17, Ch. 289, L. 1947. Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Cross-Reference

Application of Montana Rules of Civil

84-5618. The board to administer act. The board is charged with the duty of administering and enforcing the provisions of this act, and the board, its members and agents, are hereby given the powers of peace officers, and are authorized and empowered to arrest any person violating any provision of this act, and to enter complaint before any court of competent jurisdiction, and to seize without formal warrant or process and use as evidence, any forged, counterfeit, spurious, or altered license stamp or insignia found in the possession of any person or place.

History: En. Sec. 18, Ch. 289, L. 1947.

84-5619. Rules and regulations. The board shall have power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient administration thereof.

History: En. Sec. 19, Ch. 289, L. 1947.

84-5620. County attorney and other officers to assist. In the enforcement of this act, the board may call to its assistance, and it shall be the duty of any county attorney, or any peace officer, in this state, to assist the board in its enforcement of this act; and the board is hereby authorized to appoint such additional assistants as may be required to carry out the provisions of this act.

History: En. Sec. 20, Ch. 289, L. 1947.

84-5621. Clerical and field assistants. The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The war veterans' compensation fund established by Initiative No. 54, as amended by chapter 44, Laws of 1957 is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two accounts in the sinking fund established by this section.

History: En. Sec. 21, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 209, Ch. 147, L. 1963; amd. Sec. 7, Ch. 270, L. 1963.

Compiler's Notes

Initiative No. 54, Sec. 16 (Laws 1951, p. 788) reads: "Section 5621. Clerical and field assistants. * * *" This is obviously an error and should read "Section 84-5621 * * *."

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 270. Chapter 270 contained some but not all of the changes made by Ch. 147; other than this, neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

References

Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 909.

84-5622. Misdemeanors. Unless hereinbefore expressly otherwise provided, the violation of any provision of this act shall constitute a misde-

meanor, and any person violating any such provision shall be punished by a fine of not less than one hundred dollars ($100.00), or more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment; and if such person is the holder of a license issued under this act, such license shall be revoked by the board, and such person shall not be eligible for another such license within one (1) year thereafter.

History: En. Sec. 22, Ch. 289, L. 1947.

Cross-Reference

Failure to affix or cancel state tax stamps, sec. 94-35-260.

84-5623. Saving clause. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

History: En. Sec. 23, Ch. 289, L. 1947.

CHAPTER 57

PUNCH BOARDS, PULL BOARDS AND SIMILAR DEVICES—LICENSE

Section 84-5701. Repealed.
84-5702. Repealed.
84-5703 to 84-5717. Unconstitutional.
84-5718. Tax by cities and towns.
84-5719. Tax by counties.

84-5701, 84-5702. Repealed—Chapter 201, Laws of 1951.

Repeal

These sections (Secs. 1, 2, Ch. 298, L. 1947), relating to the taxation of punch boards, were repealed by Sec. 17, Ch. 201, Laws 1951.

84-5703 to 84-5717. Unconstitutional.

Unconstitutional

These sections (Secs. 1 to 15, Ch. 201, L. 1951), relating to state tax on trade stimulators, were declared unconstitutional as an attempt to authorize lotteries, in State v. Tursich, 127 M 504, 267 P 2d 641.

84-5718. Tax by cities and towns. All cities and towns are hereby authorized and empowered to levy a tax on trade stimulators including punch boards, pull cards, articles and similar devices as referred to in and as specified in title 84, sections 5701 and 5702, or any amendment thereof, by ordinance duly passed by such city or town after the effective date of this act.

From and after the passage and approval of such city or town ordinance no such article or trade stimulator shall be exhibited, nor shall any person, firm, association or corporation be interested in the exhibiting of the same, or exhibit the same or cause same to be exhibited in such city or town without having affixed thereon in a conspicuous place a use tax stamp placed thereon by the exhibitor showing the payment of such use tax. Said use tax shall, at such time, be simultaneously canceled by said exhibitor indicating by unerasable writing over the face thereof, identified by his initials and the date of cancellation on each stamp. Such use tax stamp will show that a special tax has been paid thereon at the true rate

hereby levied and imposed, viz., the sum of two per cent (2%) of the value of the total number of such tabs, tickets, pellets, punches or similar things on the board or the full cash return of such trade stimulators to the exhibitor, as computed by the purchase price posted by the exhibitor as the going price of each numbered ticket, variegated symbol, token or its equivalent; any violation of such ordinance, failure to purchase and have affixed and/or canceled such use tax stamps, reuse of canceled stamp on other than the original trade stimulator, or permitting minors to patronize a trade stimulator, shall be a misdemeanor and any person, firm, association or corporation found guilty of the violation of such ordinance shall be guilty of such misdemeanor and upon conviction shall pay a fine of not to exceed three hundred dollars ($300.00) for each separate offense or by imprisonment in the city jail for a period of not to exceed ninety (90) days, or by both fine and imprisonment. Any police officer encountering any such article without such stamps affixed thereto shall take possession of such article and same may be used as evidence of such violation.

Such city or town treasurer is hereby authorized and empowered, subject to passage of said ordinance, to provide such use tax stamps, in such design, title, forms and denominations as will be appropriate, and to collect the moneys therefor, and shall within thirty (30) days thereof place the proceeds from the sale of such use tax stamps to the general fund of such city or town; provided, however, that out of said proceeds there shall be paid, on claims regularly presented against such city or town, and approved by the proper officials of such city or town, the costs and expenses of administering the provisions of this act.

History: En. Sec. 1, Ch. 88, L. 1951.

NOTE.—Sections 84-5701 and 84-5702, referred to in the first paragraph of this section, were repealed by Sec. 17, Ch. 201, Laws 1951.

84-5719. Tax by counties. Counties are hereby given the same authorization to levy and collect a like tax in like amount on all trade stimulators as specified herein exhibited outside the corporate limits of cities and towns and county commissioners, county treasurers and sheriffs are hereby given the same authority granted to city administrators and officers.

History: En. Sec. 2, Ch. 88, L. 1951.

CHAPTER 58

PRODUCTION CREDIT ASSOCIATIONS—TAXATION

Section 84-5801. Production credit associations—assessment and payment.

84-5801. Production credit associations — assessment and payment. Every production credit association organized under the provisions of section 1131d of title 12, United States Codes annotated shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of loans, including loans secured by mortgage on real estate or personal property, the amount of such loans discounted, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed

capital shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith.

The secretary or managing agent of every such association shall furnish to the assessor of the county in which the principal office of such association is located, within five (5) days after demand therefor, a statement in such detail as the assessor may require, verified by his oath of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year. If such secretary or managing agent shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The assessor shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

History: **En. Sec. 1, Ch. 35, L. 1951.**

Cross-Reference

Rate of tax on national bank stock, sec. 84-308.

CHAPTER 59

MICACEOUS MINERAL MINES—LICENSE TAXES

Section 84-5901. "Person" defined.
84-5902. Persons subject to tax.
84-5903. Quarterly payment.
84-5904. Statement filed with state board of equalization.
84-5905. Records.
84-5906. Quarterly statement—payment of tax.
84-5907. Failure to file statement—determination of tax—collection.
84-5908. Disposition of proceeds of tax.
84-5909. Violation of act—penalty.

84-5901. "Person" defined. The term "person" as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint-stock company and association.

History: **En. Sec. 1, Ch. 50, L. 1951.**

84-5902. Persons subject to tax. Every person engaged in or carrying on the business of working or operating any mine or mining property in the state of Montana from which vermiculite, perlite, kerrite, maconite or any other micaceous minerals or hydrous silicates are mined, extracted or produced, must, for the year 1951 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state board of equalization, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, in an amount

equal to five (5) cents per ton of two thousand (2,000) pounds for each and every ton of concentrates mined, extracted or produced by such person during such year.

History: En. Sec. 2, Ch. 50, L. 1951.

84-5903. Quarterly payment. Such annual license tax as imposed by section 84-5902 shall be paid in quarterly installments for the quarters ending, respectively, March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, beginning with the quarter ending March 31, 1951, and the amount of such license tax due for each such quarter shall be paid to the state board of equalization within thirty (30) days after the end of each of such quarter.

History: En. Sec. 3, Ch. 50, L. 1951.

84-5904. Statement filed with state board of equalization. Each and every person engaged in or carrying on the business specified in section 84-5902, must, at the date when this act becomes effective, but not later than thirty (30) days thereafter, and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state board of equalization a certificate and statement on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants within this state; the name and address of the managing agent in this state if a corporation, joint-stock company or association; or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal officers; and such other information as the state board of equalization may deem necessary.

History: En. Sec. 4, Ch. 50, L. 1951.

Compiler's Note

The effective date of this act was February 20, 1951.

84-5905. Records. Every such person shall keep a record in such form as the state board of equalization may require of all such products mined or produced by him in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 50, L. 1951.

84-5906. Quarterly statement—payment of tax. Each and every person must, within thirty (30) days after the quarter ending March 31, 1951, and within thirty (30) days after the end of each following quarter, make out, on forms prescribed by the state board of equalization, and deliver to the state board of equalization, a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite or any other micaceous minerals or hydrous silicates mined or produced by such person, during each month of such quarter and during the whole quarter, and such other information as said board may require, together with the total

amount due to the state as license taxes for such quarter; and must, within such thirty (30) days, and at the same time such statement is delivered to the state board of equalization, pay to the state board of equalization the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one mine in this state, may include all thereof in one statement.

History: En. Sec. 6, Ch. 50, L. 1951.

84-5907. Failure to file statement—determination of tax—collection. If any person shall fail, neglect or refuse to file any statement required by section 84-5906 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent (25%) thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent (12%) per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state board of equalization, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 7, Ch. 50, L. 1951.

84-5908. Disposition of proceeds of tax. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 8, Ch. 50, L. 1951.

84-5909. Violation of act—penalty. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine not exceeding five hundred ($500.00) dollars, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 50, L. 1951.

CHAPTER 60

MIGRATORY PERSONAL PROPERTY—TAXATION

Section 84-6001 to 84-6007. Repealed.
84-6008. Assessment of personal property brought into the state—exceptions.
84-6009. Applicability of tax laws relating to listing for assessment.
84-6010. Law governing assessment, levy and collection.
84-6011. Proration of tax on personal property coming into state after April first.
84-6012. Livestock brought into state—notice to assessor.
84-6013. Collection of tax on livestock.
84-6014. Intention to move livestock from one county to another—notice—proration of tax.

84-6001 to 84-6007. Repealed—Chapter 41, Laws of 1953.

Repeal

These sections (Secs. 1 to 9, Ch. 85, L. 1951), relating to the taxation of migratory personal property, were repealed by Sec. 9, Ch. 41, Laws 1953. For present law, see sections 84-6008 to 84-6014.

84-6008. Assessment of personal property brought into the state—exceptions. Any personal property, including livestock, brought, driven or coming into this state at any time during the year and which shall remain in the state for a period not less than thirty (30) days, shall be subject to taxation and shall be assessed for all taxes, levied or leviable for that year in the county in which the same shall thus be and remain, in the same manner and to the same extent except as hereinafter otherwise provided, as though such property had been in the county on the regular assessment date; provided that such property has not been regularly assessed for the year in some other county of the state, and provided further that nothing herein contained shall be construed into authority to assess or levy an additional tax against any merchant or dealer within this state on goods, wares or merchandise brought into the county to replenish the stock of such merchant or dealer, so long as such addition does not materially increase the inventory or stock which has been duly assessed to such merchant or dealer as of the regular assessment date; provided further, that this act shall not apply to motor vehicles brought, driven or coming into this state by any nonresident migratory bona fide agricultural workers temporarily employed in agricultural work in Montana where said motor vehicles are used exclusively for transportation of agricultural workers.

History: En. Sec. 1, Ch. 41, L. 1953.

84-6009. Applicablility of tax laws relating to listing for assessment. The provisions of the Revised Codes of Montana, 1947, and all amendments heretofore made thereto relating to the listing of personal property for assessment and the assessment thereof for taxation, shall apply to all such personal property brought, driven or coming into this state after the regular annual assessment date as fully as though said property had been in the state on such assessment date, as of the date such property comes to rest and becomes a part of the general property within any county of this state.

History: En. Sec. 2, Ch. 41, L. 1953.

84-6010. Law governing assessment, levy and collection. All property mentioned in the preceding section shall be assessed at the same value as property of like kind and character and in the assessment, levy and collection of the tax shall be governed by the provisions of sections 84-4201 to 84-4211, inclusive, as the same exist or are amended.

History: En. Sec. 3, Ch. 41, L. 1953.

84-6011. Proration of tax on personal property coming into state after April first. If such personal property is brought or driven or comes into any county before April first the tax shall be the full amount of the tax computed as provided above, but if brought, driven or coming into the county after April first the tax shall be prorated according to the ratio which the number of months remaining in said calendar year bears to the total number of months in said year.

History: En. Sec. 4, Ch. 41, L. 1953.

84-6012. Livestock brought into state—notice to assessor. The owner or the agent, manager or foreman of any person, corporation, or association bringing livestock into this state after the first Monday in March shall immediately after said livestock crosses the state line, forward to the assessor of the county into which the livestock is moved, a registered letter, which letter shall inform said assessor of the name of the owner of such livestock, of the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided, that the Montana livestock sanitary board at least once each month furnish, from its own records to the assessor of the county into which such livestock is moved, a list of the number and kind of livestock so moved, together with the name of the owner thereof.

History: En. Sec. 5, Ch. 41, L. 1953.

84-6013. Collection of tax on livestock. The county assessor upon receipt of such letter or other information, that livestock has been brought into his county from outside of the state, after the first Monday in March in any year, shall immediately proceed under the provisions of section 84-4201.

History: En. Sec. 6, Ch. 41, L. 1953.

84-6014. Intention to move livestock from one county to another—notice—proration of tax. If any owner of livestock driven into the state as hereinbefore provided intends to move said livestock from the county of entry to another county of this state for grazing purposes, he shall file with the county assessor in the initial county a notice to that effect, giving the number and kind of livestock and the brand thereon, and the time he intends to graze such livestock in the second county, and the county assessor shall prorate the tax on such livestock in conformity with the provisions of sections 84-5202 to 84-5208, inclusive.

History: En. Sec. 7, Ch. 41, L. 1953.

CHAPTER 61

UNITED STATES PROPERTY—TAXATION

Section 84-6101. Property of United States held under contract by private person subject to taxation.
84-6102. United States property held under contract of sale—assessment at full value.
84-6103. United States property held under lease—assessment at value of leasehold.
84-6104. Collection of taxes on interests in United States lands.

84-6101. Property of United States held under contract by private person subject to taxation. Real and/or personal property of the United States or any department or agency thereof held under contract of sale, lease or other interest or estate therein by any person, corporation, or other association for his or its exclusive use shall be subject to assessment for ad valorem property taxation as in this act provided; provided, that this act shall not apply to real property held and in immediate use and occupation by this state or any county, municipal corporation or political subdivision therein.

History: En. Sec. 1, Ch. 212, L. 1951.

Cross-Reference

United States property not to be taxed, Const. Art. XII, Sec. 2.

84-6102. United States property held under contract of sale—assessment at full value. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, corporation or association, such real property shall be assessed and taxed as for the full value thereof without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid; provided, that the lien for such tax shall neither attach to, impair nor be enforced against any interest of the United States in such real property.

History: En. Sec. 2, Ch. 212, L. 1951.

84-6103. United States property held under lease—assessment at value of leasehold. When such property is held under lease or other interest or estate therein less than the fee, except under contract of sale, such property shall be assessed and taxed as for the true cash value of such leasehold, interest or estate in such property and the lien for such tax shall attach to and be enforced against only the leasehold, interest or estate in such property; provided, that where the United States authorizes the taxation of such property for the full value of the fee thereof, such property shall be assessed for such full value.

History: En. Sec. 3, Ch. 212, L. 1951.

84-6104. Collection of taxes on interests in United States lands. In addition to all other remedies available for the collection of taxes, all taxes levied in any year against property held as under the provisions of this act shall be a debt due and owing from the person, corporation or association so holding such property as of the date of delinquency for taxes on property for such tax year. If any such tax be not paid within one

year from such date, the county within which such property is located may institute for itself, the state of Montana and all other municipal corporations sharing in such taxes, an action for the collection of said taxes, together with interest, costs and other lawful charges thereon. At the time of commencement of such action the county shall have the benefit of all laws of this state pertaining to provisional remedies against the properties, either real or personal, of said person, corporation or association.

History: En. Sec. 4, Ch. 212, L. 1951.

CHAPTER 62

MINES OR WELLS PRODUCING NATURAL GAS OR PETROLEUM—NET PROCEEDS TAX

Section 84-6201. Definitions.
84-6202. Statement of yield.
84-6203. Net proceeds—how computed.
84-6204. Deduction of drilling costs and capital expenditures.
84-6205. Assessment of royalties.
84-6206. False or fraudulent reports—procedure in case of.
84-6207. Transmission of net proceeds valuations to county assessor.
84-6208. County assessors to compute taxes.
84-6209. Penalty for failure to make statement—estimate of net proceeds.
84-6210. Penalty for false statement.
84-6211. Statement required on dissolution of corporation during taxpaying year.
84-6212. Examination of records by board of equalization.
84-6213. Lien of tax—enforcement of payment.
84-6214. Surface ground and improvements not exempt.
84-6215. Retroactive effect.

84-6201. Definitions. The term "person," as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint-stock company, syndicate and association.

The terms "operator" and "producer" shall mean any person as defined above who engages in the business of mining, or drilling for, or extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

History: En. Sec. 1, Ch. 135, L. 1955.

Collateral References

Licenses⊂⇒11 (1), 29.

53 C.J.S. Licenses §§ 30, 48.

33 Am. Jur. Licenses, p. 326, § 3; p. 332, § 9.

84-6202. Statement of yield. Every person engaged in mining upon any mine whatsoever containing natural gas, petroleum, or other crude or mineral oil must on or before the thirty-first day of March in each year make out and deliver to the state board of equalization a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each mine owned or worked by such person during the next preceding calendar year, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership. Such statement shall show the following:

1. The name and address of the operator of the mine, together with a list in duplicate of the names and addresses of any and all persons owning

or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement.

2. The description and location of the mine.

3. The number of cubic feet of natural gas, barrels of petroleum, or other crude or mineral oil extracted or produced from the mine during the period covered by the statement.

4. The gross yield or value in dollars and cents.

5. Actual cost of extracting same from mine.

6. Cost of construction, repairs and betterments of mines.

7. Actual cost of fire insurance and workmen's compensation insurance.

History: En. Sec. 2, Ch. 135, L. 1955.

84-6203. Net proceeds—how computed. The state board of equalization shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person so engaged in mining, which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross products thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person so engaged in mining.

2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine.

4. All moneys expended for fire insurance and workmen's compensation insurance, and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, shall be included in such expenditures, except as provided in section 84-6204; and such expenditures shall not include the salaries, or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 3, Ch. 135, L. 1955.

84-6204. Deduction of drilling costs and capital expenditures. The state board of equalization in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow ten per cent (10%) of such cost each year for a period of ten (10) years, provided, however, the operator or producer may elect to amortize the cost over a period of two (2) years if the well is less than three thousand (3,000) feet deep.

The board shall also compute and allow deductions for any capital expenditures made during the year 1953, where the same have not been

previously allowed in computing such net proceeds under the laws of the state of Montana.

History: En. Sec. 4, Ch. 135, L. 1955.

84-6205. Assessment of royalties. The amount of royalty received shall be considered net proceeds to the recipient and shall be assessed as follows: Upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state board of equalization shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded or accrued during such preceding calendar year, and the same shall be taxed as net proceeds of mines.

History: En. Sec. 5, Ch. 135, L. 1955.

84-6206. False or fraudulent reports—procedure in case of. If any such report required by this act contains any willfully false or fraudulent statement as to the gross amount received by any person so engaged in mining as aforesaid, for any mine's product, then the said state board of equalization shall compute the gross value of such mine's product, and such gross value shall be based upon the market value at the point of production. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product in such manner as may seem to be equitable.

History: En. Sec. 6, Ch. 135, L. 1955.

84-6207. Transmission of net proceeds valuations to county assessor. On or before the first day of July in each year the state board of equalization shall transmit to the county assessor of each county in which such mines are situated, the valuation of the net proceeds of such mines for the purpose of taxation, as the same have been determined and fixed by the state board of equalization, and the lists of royalties assessed under the provisions of section 84-6205. The county assessor shall enter the same upon an assessment roll called "Assessment Roll of Net Proceeds of Mines," the form of which shall be prescribed by the state board of equalization in conformity with the provisions of this act. The royalty assessments shall be entered by the county assessor under the name of the operator, and such assessments of royalty when entered shall have all the force and effect as if made in the names of the owners of such royalty individually as well as against the operator.

History: En. Sec. 7, Ch. 135, L. 1955.

84-6208. County assessors to compute taxes. Immediately after the county board of equalization has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963.

84-6209. Penalty for failure to make statement—estimate of net proceeds. If any person shall refuse or neglect to make and deliver, under oath, to the state board of equalization any statement required by this act, or to comply with any requirements of this act, the state board of equalization must cause such refusal to be noted upon the assessment roll opposite the name of such person, and must make an estimate of the cubic feet of natural gas, barrels of petroleum or other crude or mineral oil mined and treated or sold by such person, and upon such estimate shall fix and determine the value of the net proceeds of said mine as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state board of equalization shall have the power to subpoena and examine under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1000), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 135, L. 1955.

84-6210. Penalty for false statement. If any person required by this act to make or file any statement, or verify, under oath, any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any material respect, such person shall be deemed guilty of perjury, and upon conviction thereof shall be punished as is by law provided for the punishment of perjury.

History: En. Sec. 10, Ch. 135, L. 1955.

84-6211. Statement required on dissolution of corporation during taxpaying year. Every person who shall cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by this act, and pay the tax due for such period as it transacted business, on or before the date of such cessation of business. The state board of equalization may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 11, Ch. 135, L. 1955.

84-6212. Examination of records by board of equalization. The state board of equalization shall have the right and power, at any time, to examine all books, records, papers and documents of such person pertaining to such business, in order to verify the statements made by such person, and if, from such examination, or from other information, said state board of equalization finds any statement, or any material part thereof, willfully false or fraudulent, said state board of equalization must assess in the same manner as provided for in section 84-6203.

History: En. Sec. 12, Ch. 135, L. 1955.

84-6213. Lien of tax—enforcement of payment. The taxes on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax is a lien upon the mine from which the natural gas, petroleum, or crude or mineral oil is mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such natural gas, petroleum, or crude or mineral oil; provided, however, that such personal or real property is owned by or under lease by the person who extracted said natural gas, petroleum, or other crude or mineral oil.

The tax on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

History: En. Sec. 13, Ch. 135, L. 1955.

84-6214. Surface ground and improvements not exempt. Nothing in this act must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or supplies used in connection therewith.

History: En. Sec. 14, Ch. 135, L. 1955.

84-6215. Retroactive effect. This act is hereby declared to be retroactive from and after January 1, 1954.

History: En. Sec. 15, Ch. 135, L. 1955.

CHAPTER 63

IMPORTERS TAX ON GASOLINE PURCHASED OUTSIDE STATE AND USED IN STATE

Section 84-6301. Gallonage tax on gasoline in fuel tanks in excess of twenty gallons purchased outside state and used in state—exception—arrangement to buy equal amount of gas in state—monthly report.
84-6302. Monthly statement to be filed even if no purchases made or tax due.
84-6303. Payment of tax—how made—disposition of amounts received.

84-6304. "Importer" defined.
84-6305. Definition of other words and terms.
84-6306. Penalty for failure, neglect, or refusal to make statement or pay tax—notification—additional penalty for failure to comply after notification.
84-6307. Failure or refusal to make and file return or false return—board of equalization to prepare statement.
84-6308. Failure, neglect, or refusal to file return or false return—misdemeanor—penalty.

84-6301. Gallonage tax on gasoline in fuel tanks in excess of twenty gallons purchased outside state and used in state—exception—arrangement to buy equal amount of gas in state—monthly report. Every importer who brings in to this state in the fuel tanks of any motor vehicle more than twenty (20) gallons of gasoline, purchased outside the state and used to operate the vehicle upon the public highways and streets of the state, shall pay the state gallonage tax on all such gasoline in excess of twenty (20) gallons unless, under an arrangement approved by the state board of equalization, he shall purchase within the state gasoline equal to such excess. Within thirty (30) days after the close of each month, he shall file with the state board of equalization a report, on such forms and under such rules and regulations as the state board of equalization may prescribe, of all such gasoline imported by him so used within this state, and shall at the same time pay to the state board of equalization the amount of tax due for such month.

History: En. Sec. 1, Ch. 174, L. 1955.

84-6302. Monthly statement to be filed even if no purchases made or tax due. The statements required in this act shall be filed for each month regardless of whether or not the same shows purchases during any month and regardless of whether or not a tax is due.

History: En. Sec. 2, Ch. 174, L. 1955.

84-6303. Payment of tax—how made—disposition of amounts received. All payments of taxes imposed by this act shall be made by certified check, cashier's check, bank draft, or money order, payable to the state board of equalization, who shall retain five per cent (5%) of the funds collected in payment of the license tax to defray cost of administration, and the remaining ninety-five per cent (95%) shall be remitted monthly, on or before the fifteenth (15th) day of the month after collection, to the treasurer of the state of Montana for deposit in the state highway fund.

History: En. Sec. 3, Ch. 174, L. 1955.

84-6304. "Importer" defined. The term "importer" shall mean any person who purchases or obtains gasoline outside the state and uses same within the state, and who operates a motor vehicle equipped with fuel tanks containing more than twenty (20) gallons of gasoline purchased outside the state and used to operate the vehicle upon the public highways and streets of the state.

History: En. Sec. 4, Ch. 174, L. 1955.

84-6305. Definition of other words and terms. All other words and terms used in this act, including the words "person," "motor vehicle,"

"gasoline" and "use," unless otherwise indicated in this act, shall have the same meaning given to said words by section 84-1801.

History: En. Sec. 5, Ch. 174, L. 1955.

84-6306. Penalty for failure, neglect, or refusal to make statement or pay tax—notification—additional penalty for failure to comply after notification. If any importer fails, neglects, or refuses to make any statement required for any month, or to pay the license tax due for any month, within the time prescribed for the filing of such statement or the payment of such tax, there shall automatically accrue a penalty equal to one-tenth of one cent (.1c) on each gallon of gasoline purchased during that month, the amount of such penalty shall in no case be less than five dollars ($5.00), or, if no purchases were made, a penalty of five dollars ($5.00), such penalty to be paid or collected in the manner hereinafter provided.

The state board of equalization shall notify any importer that fails, neglects or refuses to make any statement required for any month within the time prescribed for the filing of such statement or the payment of such tax, of such failure and if the required statement is not filed or payment of tax is not made within ten (10) days from the date of such notification, there shall automatically accrue a penalty equal to one cent (1c) on each gallon of gasoline purchased during that month, the amount of which penalty shall in no case be less than twenty-five dollars ($25.00), or, if no purchases were made, a penalty of twenty-five dollars ($25.00), such penalty to be paid or collected in the manner hereinafter provided.

History: En. Sec. 6, Ch. 174, L. 1955.

84-6307. Failure or refusal to make and file return or false return—board of equalization to prepare statement. If any importer fails or refuses to make and file a return at the time prescribed in this act, or make, willfully or otherwise, an erroneous, false, or fraudulent statement, the state board of equalization, or its duly appointed agent, shall make the statement from its or his own knowledge and from such information as it or he can obtain through testimony or otherwise. Any statement so made shall be prima facie good and sufficient for all legal purposes. As a further means of making the statement, the state board of equalization or its duly appointed agent, shall have the power to examine the books, records and papers of such importer, to ascertain the amount of tax due under the provisions of this act. From the statement so made, the state board of equalization shall determine the amount of tax due, if any, and shall add the penalty provided herein for failure to pay the tax or to file the return within the time prescribed for the payment of such tax or the filing of such return, and shall notify the importer, of the amount of tax and penalty assessed together with a demand for immediate payment of the tax and penalty. If such tax and penalty is not paid within thirty (30) days, the treasurer of the state of Montana shall proceed to collect such tax and penalty in the manner prescribed in section 84-1807.

History: En. Sec. 7, Ch. 174, L. 1955.

84-6308. Failure, neglect, or refusal to file return or false return—misdemeanor—penalty. Each importer, who fails, neglects, or refuses to

make and file the statements required by this act in the manner or within the time herein provided, or shall make any false statements with reference to his purchase of gasoline and use of gasoline within the state of Montana, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof, shall be fined in any amount not exceeding one thousand dollars ($1,000.00), or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 8, Ch. 174, L. 1955.

CHAPTER 64

FLIGHT PROPERTY OF AIRLINE COMPANIES—ASSESSMENT AND TAXATION

Section 84-6401. Definitions.
84-6402. Assessment of flight property.
84-6403. Report by airline company.
84-6404. Determination of value.
84-6405. Hearing before board.
84-6406. Procedure on failure to file statement.
84-6407. Transmission of statement of amount apportioned to counties.
84-6408. Record of assessment and apportionment of properties.
84-6409. Effect of adjudication act unconstitutional.
84-6410. Extension of time for making report.

84-6401. Definitions. The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) "Person" means any individual, corporation, firm, copartnership, company, or association, and includes any guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity therefor.

(b) "Scheduled airline company" means any person or company who undertakes directly or indirectly to engage in the business of scheduled air commerce.

(c) "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

(d) "Flight property" means aircraft fully equipped ready for flight used in air commerce within the state of Montana.

(e) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate or international transportation on regularly scheduled flights.

(f) "Equated plane hours" means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(g) "Operating" or "operated" means landings or take-offs during interstate flight.

History: En. Sec. 1, Ch. 249, L. 1955.

84-6402. Assessment of flight property. The flight property of all scheduled airline companies operating in Montana under a certificate of convenience and necessity issued by the United States civil aeronautics board shall be assessed annually by the state board of equalization.

History: En. Sec. 2, Ch. 249, L. 1955.

84-6403. Report by airline company. Every airline company engaged in air commerce in this state shall annually, on or before the first day of May, file with the board in such form as the board may require, a report under oath, showing the following:

(1) The name of the person or persons, association, joint-stock company or corporation;

(2) Under the laws of what state organized or existing;

(3) The location of its principal office;

(4) The location of its principal office in this state, if any;

(5) The number of aircraft of each type or kind, the total original cost, the average cost per plane, the total depreciated cost, and the average depreciated cost per plane at the end of the preceding calendar year;

(6) The number of shares of capital stock authorized, number of shares outstanding, the total par value and the total market value at the end of the preceding calendar year; the par value of outstanding bonds and long term debt, and the market value at the end of the preceding calendar year;

(7) Income account showing operating revenues and expenses of the entire system and net operating income during the preceding calendar year;

(8) The total tonnage of passengers, express and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express and freight finally discharged by it within this state during the preceding calendar year, and the total of such tonnage first received by the airline company or finally discharged by it, within and without this state during the preceding calendar year;

(9) The total time in equated plane hours, of all aircraft of the scheduled airline company in flight in this state during the preceding calendar year, plus the total time of such aircraft on the ground in this state during the preceding calendar year and the total of such time in flight or on the ground within and without this state during the preceding calendar year;

(10) The number of revenue ton miles of passengers, mail, express and freight flown by the scheduled airline company within this state during the preceding calendar year and the total number of such miles flown by it within and without this state during the preceding calendar year;

(11) The number of arrivals and departures of all aircraft of the scheduled airline company in this state during the preceding calendar year and the total number of such arrivals and departures within and without this state during the preceding calendar year;

(12) Such other information as the board may require.

History: En. Sec. 3, Ch. 249, L. 1955.

84-6404. Determination of value. The board shall determine the full and true valuation of all flight property operated or used by every scheduled airline company in air commerce in this state. In determining the valuation apportioned to this state of such flight property, the board may consider the proportion of total tonnage in the state, total time in equated plane hours, number of revenue ton miles and number of arrivals and departures as required to be reported under section 84-6403.

History: En. Sec. 4, Ch. 249, L. 1955.

84-6405. Hearing before board. After making such assessment the board shall give at least ten (10) days' written notice thereof to the person or persons to whom the assessment is made, together with time and place of hearing thereon, at which time and place such person or persons, or any taxpayer may appeal [appear] before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised.

History: En. Sec. 5, Ch. 249, L. 1955.

Compiler's Note

The bracketed word "appear" was inserted by the compiler.

84-6406. Procedure on failure to file statement. If any airline company shall refuse or neglect to make the statement required by this act to the board, or shall refuse or neglect to permit an inspection and examination of its property, its records, books, accounts, or other papers when requested by the board or shall refuse or neglect to appear before the board when required so to do, the board shall assess the property of such airline company according to its best judgment on available information, and may add to the assessment a penalty not exceeding ten per cent (10%) of the assessment, and such airline company shall be estopped to question or impeach the action or determination of the board thereon.

History: En. Sec. 6, Ch. 249, L. 1955.

84-6407. Transmission of statement of amount apportioned to counties. On or before the second Monday in July, the board shall apportion such assessment to the counties in or through which the airline operates. The county assessor must enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county. The assessment shall be assigned to class 7 having a taxable value of forty per cent (40%) of assessed value.

History: En. Sec. 7, Ch. 249, L. 1955.

84-6408. Record of assessment and apportionment of properties. The state board of equalization must keep a record of all such assessments and apportionments.

History: En. Sec. 8, Ch. 249, L. 1955.

84-6409. Effect of adjudication act unconstitutional. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses, or phrases may be declared unconstitutional or invalid.

History: En. Sec. 9, Ch. 249, L. 1955.

84-6410. Extension of time for making report. The board for good cause may extend for not to exceed thirty (30) days the time for making a report as required under section 84-6403.

History: En. Sec. 10, Ch. 249, L. 1955.

CHAPTER 65

LICENSE TAXES—RACING ASSOCIATIONS

Section 84-6501. Repealed.
84-6502. Rate of tax—payment—disposition.
84-6503. Penalty.
84-6504. Fair boards exempt.

84-6501. Repealed—Chapter 196, Laws of 1965.

Repeal

This section (Sec. 1, Ch. 57, L. 1961), relating to reports to the county treasurer on racing meets held pursuant to former section 94-2425, was repealed by Sec. 15, Ch. 196, Laws 1965.

84-6502. Rate of tax — payment — disposition. Within twenty (20) days of the time of said racing event, said racing association shall pay to the county treasurer of the county where said racing event was held a license tax on the amount of bets, wagers or entrance fees handled daily at the following rates, to wit:

(1) Up to ten thousand dollars ($10,000.00) one-fourth (¼) of one (1) per centum.

(2) On the next five thousand dollars ($5,000.00) one-half (½) of one (1) per centum.

(3) On the next five thousand dollars ($5,000.00) three-fourths (¾) of one (1) per centum.

(4) On the next five thousand dollars ($5,000.00) one (1) per centum.

(5) On the next ten thousand dollars ($10,000.00) two (2) per centum.

(6) On any excess over thirty-five thousand dollars ($35,000.00) three (3) per centum.

Subject to a minimum tax of twenty-five dollars ($25.00) per racing day.

Seventy-five (75) per cent of said tax shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection and be placed in the general fund of the state of Montana; the balance of said tax shall be retained by the respective county for its poor fund.

History: En. Sec. 2, Ch. 57, L. 1961.

Collateral References

Theaters and Shows⇐3.
86 C.J.S. Theaters and Shows § 26.
33 Am. Jur. 336, Licenses, § 17; 52 Am. Jur. 271, Theaters, Shows, Exhibitions and Public Resorts, § 23.

Validity of license tax on horse race. 58 ALR 1343.

84-6503. Penalty. Each club, partnership, individual, corporation or association, who fails, neglects or refuses to make and file the report or reports required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to or in connection with such report or reports, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), and each and every day that such violation shall continue shall constitute a separate and distinct offense.

History: En. Sec. 3, Ch. 57, L. 1961.

84-6504. Fair boards exempt. All county fair boards are expressly excepted from the provisions of this act.

History: En. Sec. 4, Ch. 57, L. 1961.

CHAPTER 66

PROPERTY TAX ON HOUSE TRAILERS

Section 84-6601. Trailers subject to act.
84-6602. Display of property tax sticker required—issuance and contents of sticker.
84-6603. Tax receipt to be produced if trailer stopped on highway.
84-6604. Penalty for failure to display sticker or produce receipt.
84-6605. Act restricted to trailers subject to taxation.

84-6601. Trailers subject to act. As used in this act:

"House trailer" means; (1) A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) whether mobile or stationary; or

(2) A trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, whether mobile or stationary.

History: En. Sec. 1, Ch. 275, L. 1965.

Collateral References

Power to tax trailers or mobile homes as real estate. 86 ALR 2d 277.

84-6602. Display of property tax sticker required—issuance and contents of sticker. The owner of a house trailer must display on the back of his house trailer or in another conspicuous place a property tax paid sticker prescribed by the supervisor of the Montana highway patrol with the approval of the registrar of motor vehicles. The registrar shall produce the stickers for each county. The stickers shall contain the identifying number of the county and consecutive numbers starting with the number one (1) in each county. The sticker shall be issued by the county treasurer at the time of payment of property taxes. The sticker shall be displayed from fifteen (15) days after the due date for personal property taxes of one year to the due date for personal property taxes of the next year.

History: En. Sec. 2, Ch. 275, L. 1965.

84-6603. Tax receipt to be produced if trailer stopped on highway. If stopped on a highway or at a state vehicle weight station by a state highway patrolman or state vehicle weight station attendant, a person transporting a house trailer must produce, if requested, the property tax paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed.

History: En. Sec. 3, Ch. 275, L. 1965.

84-6604. Penalty for failure to display sticker or produce receipt. The failure to display a property tax paid sticker or the failure to produce a property tax paid receipt from fifteen (15) days after the due date

for personal property taxes of one year to the due date for personal property taxes of the next year shall constitute a misdemeanor punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment.

History: En. Sec. 4, Ch. 275, L. 1965.

84-6605. Act restricted to trailers subject to taxation. The provisions of this act shall apply only to those house trailers, as defined in this act, subject to assessment and taxation under section 84-406 and section 84-6008.

History: En. Sec. 5, Ch. 275, L. 1965.

State Law Library of Montana
3 0000 00243315 3

DOES NOT
CIRCULATE